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## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1963

No. 485

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LOCAL 20, TEAMSTERS, CHAUFFEURS AND  
HELPERS UNION, ETC., PETITIONER,

vs.

LESTER MORTON, ETC.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR CERTIORARI FILED SEPTEMBER 20, 1963  
CERTIORARI GRANTED DECEMBER 9, 1963

# SUPREME COURT OF THE UNITED STATES

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LOCAL 20, TEAMSTERS, CHAUFFEURS AND  
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OF APPEALS FOR THE SIXTH CIRCUIT

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

No. 14984

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**LESTER MORTON, d/b/a Lester Morton Trucking Company,  
Plaintiff-Appellee,**

**vs.**

**LOCAL 20, TEAMSTERS, CHAUFFEURS, AND HELPERS UNION,  
an Affiliate of the International Brotherhood of Team-  
sters, Chauffeurs, Warehousemen and Helpers of  
America, Defendant-Appellant.**

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OHIO, WESTERN DIVISION**

**Appellant's Appendix—Filed May 21, 1962**

**[File endorsement omitted]**

[fol. 1]

**IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

No. 8222.

LESTER MORTON, dba, etc.,

vs.

LOCAL 20, TEAMSTERS, and LAWRENCE EVANS, et al.

**EXCERPTS FROM DOCKET ENTRIES**

Date	Proceedings.
6-22-59	Complaint filed. Summons issued. Four copies of summons and four copies of complaint to U. S. Marshal.
. . . . .	
[fol. 3] 10-11-60	Motion of defendant to dismiss filed. Memorandum in support of motion attached. Mailed 10-11-60.
10-21-60	Memorandum of plaintiff in opposition to motion to dismiss filed. Mailed 10-20-60.
10-24-60	Reply memorandum of defendant re motion to dismiss filed. Mailed 10-24-60.
12-9-60	Order overruling motion to dismiss and plaintiff is granted leave to file amended complaint within 15 days filed. FLK Copies 77d to Flynn and Gallon.
12-16-60	Second amended complaint filed. Jury demand attached. Copy mailed to Gallon.
1-30-61	Notice to attend pre-trial conference 3-17-61, mailed.

## Date

## Proceedings.

3-17-61 Pretrial order filed. FLK Answer filed 1-4-60 to be considered answer to second amended complaint. Assigned for trial 4-24-61. Copies 77d to Moan and Gallon.

[fol. 6]

1-26-62 Order entering judgment for plaintiff in the sums of \$19,619.62 as compensatory damages and \$15,000.00 as punitive damages for a total of \$34,619.62 and costs in the sum of \$490.44 filed and entered. FLK 17 Copies 77d to Flynn, Hafer and Gottschalk.

[fol. 14]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

[Title omitted]

ANSWER TO AMENDED COMPLAINT—Filed January 4, 1960

1. For answer to the Amended Complaint of the plaintiff as to the allegations contained in paragraph 1 of said Amended Complaint, defendant admits that there is no diversity of citizenship between the parties.

2. With respect to the allegations of the Amended Complaint contained in paragraph 2 of plaintiff's Amended [fol. 15] Complaint, defendant admits that plaintiff is engaged in the trucking business as a sole proprietor under the name of Lester Morton Trucking Company at Tiffin, Ohio.

3. Further answering, defendant denies that the amount in controversy exceeds the sum of Ten Thousand Dollars (\$10,000).



4. Defendant admits that it is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

5. Defendant denies the allegations in paragraph 5 of plaintiff's Amended Complaint.

6. Defendant denies the allegations of paragraph 6 of plaintiff's Amended Complaint.

7. Defendant denies the allegations of paragraph 7 of plaintiff's Amended Complaint.

8. Defendant denies the allegations of paragraph 8 of plaintiff's Amended Complaint.

9. Defendant denies the allegations of paragraph 9 of plaintiff's Amended Complaint.

10. Defendant denies the allegations of paragraph 10 of plaintiff's Amended Complaint.

11. Defendant denies the allegations of paragraph 11 of plaintiff's Amended Complaint.

12. Defendant denies each and every allegation contained in plaintiff's Amended Complaint not hereinabove specifically admitted to be true or otherwise specifically denied.

Wherefore defendant prays that the Amended Complaint of the plaintiff be dismissed; that the relief sought by plaintiff [fol. 16] be denied and that defendant recover its costs herein.

Law Offices of Jack Gallon, By \_\_\_\_\_  
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

[Title omitted]

APPLICATION FOR LEAVE TO FILE MOTION TO DISMISS—  
Filed September 28, 1960

Now comes the defendant in the captioned suit and requests the Court for an order allowing it to file the attached Motion to Dismiss for the following reasons:

1. It was not until counsel recently completed his research for the trial brief that he became fully aware of the insufficiency of the amended complaint to state a cause of action and the failure of the amended complaint to invoke the jurisdiction of this Court.

2. Rule 12.(h) of the Federal Rules of Civil Procedure provides that the filing of an answer in this case does not waive the objection by motion that the amended complaint fails to state a claim upon which relief can be granted and [fol. 17] that the Court lacks jurisdiction of the subject matter. Rule 12 (h) provides

“that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”

Law Offices of Jack Gallon, By Jack Gallon.

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

[Title omitted]

MOTION TO DISMISS—Filed October 11, 1960

Defendant moves the Court for an order dismissing the amended complaint in the captioned case since the court lacks jurisdiction of the subject matter and the amended

complaint fails to state a claim upon which relief can be granted.

Law Offices of Jack Gallon, By Jack Gallon, Attorney  
for Defendant, 435 S. Hawley Street, Toledo, Ohio.

[fol. 18]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

[Title omitted]

SECOND AMENDED COMPLAINT—Filed December 16, 1960.

Now comes the Complainant and for a cause of action alleges that:

1) This action arises under one of the statutes of the United States, to wit, the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. A. 145, and that thereunder no diversity of citizenship is required to vest jurisdiction in this court for causes of action of the nature herein set forth.

2) Complainant is engaged in the trucking business as a sole proprietor under the name of Lester Morton Trucking Company at Tiffin, Ohio, and has been so engaged at all times hereinafter complained of, which trucking business, at all times hereinafter complained of, affected commerce within the meaning of the Labor Management Relations Act.

3) The amount in controversy exceeds the sum of Ten Thousand Dollars (\$10,000.00).

4) Defendant is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

5) On the 17th day of August, 1956, at about 5:30 o'clock a.m. the defendant, willfully, maliciously and in pursuance of a conspiracy to injure, damage and destroy Complainant's trucking business, caused approximately fifteen (15)

men to appear at the Complainant's business premises and to picket said place of business with many signs, or banners, which stated that defendant labor union was on strike against the Complainant; that the aforesaid picketing by large numbers of men was caused by the defendant to continue until August 21, 1956 on which date an injunction against picketing by more than two (2) men at each entrance was issued by the Common Pleas Court of Seneca County, Ohio; that said picketing by large numbers of men continued in violation of said injunction, and with the knowledge of and under the instructions of the defendant.

6) In causing the business premises of the Complainant to be picketed as aforesaid the defendant organized, promoted, conducted and prosecuted said picketing which resulted in unlawful interference with and obstruction of Complainant's trucking business; that as a result of the aforesaid picketing, the defendant interfered with the conduct of Complainant's business and with his right, and the right of the public to free, unobstructed ingress to and egress from the Complainant's place of business.

[fol. 20] 7) The defendant further unlawfully obstructed and interfered with Complainant's right to freely engage in his normal business activities by, among other things, willfully and maliciously threatening various persons and corporations with which the Complainant had contractual relations, with picketing at their construction sites if they continued to do business with the Complainant.

8) The defendant further unlawfully obstructed and interfered with Complainant's right to freely engage in his normal business activities by, among other things, willfully and maliciously inducing and encouraging and attempting to induce and encourage certain employers, and the employees thereof, having contractual business relations with the Complainant, to engage in a concerted refusal to continue such contractual business relations with the Complainant and to force and require the Complainant to recognize and bargain with the defendant, who was not certified as the representative of the employees of the Complainant.



9) The defendant further unlawfully obstructed and interfered with Complainant's right to freely engage in his normal business activities by, among other things, willfully and maliciously inducing and encouraging the employees of other employers to engage in concerted refusals in the course of their employment to perform services, all for the purpose of forcing and requiring such employers to cease doing business with the Complainant.

10) The mass picketing and secondary boycott activities engaged in by the defendant against the Complainant, as aforesaid, were in violation of the provisions of the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U. S. C. A. 145, and caused great damage to the Complainant, in that among other things: (1) He lost numerous truck-[fol. 21] ing jobs as a result thereof from which he would have received substantial profits but for said mass picketing and said secondary boycott activities; (2) Numerous other jobs under contract by the Complainant were delayed; and (3) Nearly all of Complainant's trucking equipment was forced to remain idle during the aforesaid period of time.

11) Complainant has been further damaged by the aforesaid actions of the defendant in that it was necessary for him to retain legal counsel, at considerable expense, to obtain an injunction against said defendant arising out of the actions hereinbefore described.

Wherefore, Complainant prays judgment against the defendant in the amount of Fifty Thousand Dollars (\$50,000.00) as compensatory damages and Fifty Thousand Dollars ((\$50,000.00) as punitive damages for a total of One Hundred Thousand Dollars (\$100,000.00), plus the costs of this action.

Complainant hereby requests trial by jury.

• Flynn, Py & Kruse, Sandusky, Ohio, Attorneys for Complainant.

[fol. 22]

IN DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OHIO

[Title omitted]

**Transcript of Proceedings—April 24, 1961**

**APPEARANCES:**

Flynn, Py & Kruse, By John R. Py, Esq., and Melvin J. Stauffer, Esq., in behalf of the Plaintiff.

Goldberg, Previant & Cooper, By Hugh Hafer, Esq., Jack Gallon, Esq., in behalf of the Defendants.

Transcript of Proceedings taken in the above-entitled cause of action, before the Honorable Frank LeBlond Kloeb, United States District Judge, trial commencing at ten o'clock A. M., Monday, April 24, 1961.

**EXCERPTS FROM OPENING STATEMENT BY MR. HAVER,  
COUNSEL FOR DEFENDANT**

Finally and in conclusion, we wish to advise the Court that we will in a few minutes serve the plaintiff with an [fol. 23] Answer to the Second Amended Complaint. Technically, the record does not contain an Answer to the Second Amended Complaint. There is in the record an Answer to the Amended Complaint.

This Answer adds one paragraph which was not in the other Answer. That paragraph alleges a res judicata defense. That defense will require only about twenty minutes of evidence, because all we will adduce in support of it is a pleading by the plaintiff which is in all terms identical to the pleading in a state court asking for damages in the same amount and a responsive pleading which we filed in the judgment of the state court, and we ask leave of the Court under Rule 15 to file the Answer to the Amended Complaint raising affirmatively the issue of res judicata which was not specifically pleaded before.

The Court is asked for leave to put in brief documentary evidence which will be required to support our legal arguments which we will make in this area.

That concludes our opening statement, your Honor, but I would be more than happy at this time to answer any preliminary questions which the Court might have either with respect to our legal theories or with respect to the procedure which we intend or contemplate following in the presentation of our case.

The Court: Does the plaintiff desire to make any responsive statement?

Mr. Stauffer: Yes, sir.

RESPONSIVE STATEMENT BY MR. STAUFFER,  
COUNSEL FOR PLAINTIFF

We will address our remarks, if the Court please, to the statements of counsel in reverse order, mentioning first his statement with respect to the filing of the Amended Answer. We will object to that for several reasons, the primary one of which is the fact that this Court ordered that pursuant to Mr. Gallon's request at the second pretrial conference that the Answer previously filed be considered the Answer in this case. We have not had the opportunity [fol. 24] to read the Amended Answer. I don't believe it will be necessary.

Secondly, with respect to opposing counsel's suggestion that this case be further delayed, we oppose that most strenuously. We expect to do all in our power to complete the case in the time allotted.

With respect to the jurisdiction of this Court to award damages for torts in the state common law area, I think our trial brief adequately covers that question.

The Court of Appeals in this Circuit has said that even though the plaintiff fails on the Federal grounds—and we do not expect to do so here—the Court has jurisdiction to grant damages in or on state common law alone and we are prepared to go forward accordingly and with the full case.

## COLLOQUY BETWEEN COURT AND COUNSEL

The Court: I will say to you gentlemen that I am somewhat handicapped. I have been on the Bench nearly 24 years and I have never failed to meet an assignment of a case for trial during that time, although counsel have frequently failed me. I thought I might have to be absent today. I was in bed for several days over the weekend. So that I am here under a handicap. The cold that I have now has affected my hearing. You gentlemen will have to speak loudly enough so that I will not have to have you repeat what you have said.

In connection with counsel's opening statement, I want to review for a moment the situation we have because the request to file an Answer to the Second Amended Complaint is rather embarrassing at this time.

Let me call counsel's attention to the history of this case.

The Complaint was filed on June 22, 1959, and a motion to separate the counts was filed by the defense on July 14th. At the same time, another motion was filed by the defense to dismiss the three individuals who in [fol. 25] the original Complaint had been named parties defendant. Then on July 22nd there was a motion to dismiss, or a memorandum filed in support of the motion to dismiss. On August 5th a brief in opposition to the motion to separate counts. On September 8, 1959, the Court overruled the motion to separate the counts and the order is so filed.

On the same date the Court sustained the motion to dismiss the individual defendants and an order was filed bearing that same date, September 8, 1959.

The Amended Complaint was filed on September 25th. Then a motion was made by the defense to strike from the Amended Complaint. That was filed on October 24th. On October 27th a memorandum in opposition to the motion to strike. On November 20th the motion to strike was overruled and an order filed accordingly.

Then on December 24th an application was filed for default judgment on the ground that the defendant had failed to file an Answer to the Amended Complaint. That was on December 24th, as I say. I don't know whether



an order was ever entered sustaining that motion. The defendant was in default.

On December 28th the defendant filed a motion to vacate the default judgment and asked leave to plead. On December 31st there was a motion in opposition to the defendant's motion to vacate judgment.

On January 4th the Court sustained the motion to vacate the default entry and granted leave to the defendant to file an Answer. On January 4th the Answer was filed as of that same date.

Now, there was a pretrial conference, a notice of pretrial on September 12th, 1960, and the case came on for pretrial. At that pretrial counsel for the defense moved the Court for leave to file a motion attacking the jurisdiction of the Court, and that was filed on September 28th [fol.26] the day of the pretrial. The Court granted the motion and the assignment was vacated and the defendants were granted leave to file a motion to dismiss the Amended Complaint. Motion to dismiss was filed on October 11th. This was all in 1960.

October 12, 1960, memorandum in opposition to motion to dismiss, and October 24th motion to dismiss, reply memorandum motion to dismiss, reply memorandum. On December 9th the motion to dismiss was overruled. On December 16th the Second Amended Complaint was filed.

Then there was notice served of pretrial to be had on January 4th. I am not certain about that date. There seems to be no entry here in connection with that. At that pretrial a consent—at that pretrial an order was entered, at the consent of counsel for the defense, to the effect that the Answer to the original Complaint should be the Answer to the Second Amended Complaint. That is here some place. I have a note to that effect.

Mr. Stauffer: That date is March 17th, if the Court please.

The Court: March 17th. I knew there was an order here of that kind. There are so many documents here that I can't put my finger on it. I think Mr. Gallon will recollect that, that it was agreed that the Answer to the Amended Complaint should be the Answer to the Second Amended Complaint.

Now, although the pretrial orders called for pretrial briefs, the defense has never filed a pretrial brief. I have had two pretrial briefs filed by the plaintiff. So that this legal argument that you are putting up at this time might well have been done in the pretrial brief, and I feel that if it occasions a delay in the trial that the Court should not permit it.

Mr. Hafer: I am advised that the defense did file a pretrial brief raising the issues of the legality of the in-[fol. 27] ducement of supervisors and management representatives. I personally have had a chance to review that brief from the defense file.

The Court: At the first pretrial it was stated by counsel for the defense that he desired his memorandum on the motion to dismiss to be his pretrial brief.

Mr. Hafer: I believe that is correct, your Honor, and that memorandum also raised the res judicata issue by way of memorandum which I have asked the Court to allow an amendment of pleadings on. We are embarrassed by it, too, your Honor. It should have been raised in the previous pleading rather than in a memorandum, but in the interest of justice under Rule 14 we ask—

The Court: (Interposing) I understand that, but we have been at this case since July of 1959. The Court has been very patient with numerous motions and two pretrials in open court, and the Court doesn't feel that in justice to the opposing side that he ought to permit any delay now. What do you think?

Mr. Hafer: The res judicata defense issue, your Honor, which is the only issue raised by the amended pleading will require not in excess of twenty minutes of trial time.

The Court: I don't know about that, of course; I have not seen the Amended Answer that you—

Mr. Hafer: (Interposing) I can assure the Court that our evidence will consist solely of three documents, a plaintiff's Complaint in the state court action, a responsive pleading by these defendants, and a journal entry, all of which will be in the form of certified documents. That will be the sole evidence in connection with the issue which we intend to raise. It will not require, even if the adducement of the evidence is opposed, more than twenty minutes of this Court's time.

[fol. 28] The Court: Are you willing to allow that to be filed?

Mr. Stauffer: We are—definitely not, your Honor. We are prepared to go ahead on the issues as made.

The Court: I haven't seen it. I don't know what it is going to raise except that counsel has made the statement that it will take twenty minutes, an additional twenty minutes of evidence.

Mr. Stauffer: I haven't read it. I don't think it is necessary at this point. We have sufficient issues made over many months. I think it is mandatory that we proceed with those issues.

Mr. Hafer: I don't see how counsel can argue and the Court can consider its ruling until it reads the Paragraph 13.

(Thereupon, Mr. Hugh Hafer handed a document to the Court.)

The Court: I believe that was argued in the motion to dismiss.

Mr. Hafer: It was, your Honor.

The Court: And at that time it was brought out that the Common Pleas Court of Seneca County—I believe it was Seneca County—had discovered an opinion that had just been promulgated by the United States Supreme Court in the San Diego Building Trades Council case, and the Court there felt it stripped him of any further right to proceed and he dismissed the case without prejudice; am I correct about that?

Mr. Stauffer: Yes, sir, that is right. In our memorandum in opposition to the latest motion to dismiss, we summarized what appeared to us to be the points that opposing counsel was raising at that time, and the first one was that the prior state court action, in which the plaintiff and others were parties, is a bar to this action, which is based upon the same subject matter, and the opposing counsel in his reply memorandum agreed that that was [fol. 29] one of the issues, and this Court, of course, allowed us to file an Amended Complaint.

Mr. Hafer: I am not proposing to take the Court's time arguing whether our affirmative defense is meritorious. We

will do that in the brief after the trial, but the colloquy here makes it perfectly plain, your Honor, that this issue has been in the case for a long time.

Now, we are embarrassed because it was raised by a memorandum rather than by a pleading. All we are asking this Court to do is to allow us to put in proper pleading shape an issue which has been in the case for a long time, which everyone has been appraised of, so that we are not under the Federal Rules waiving that issue by procedural technicality, namely, that we raised it by memorandum rather than by a paragraph in our Answer or by motion.

All we ask this Court to do is to allow us to plead the argument so that our evidence can be adduced and we are not in a position of waiver on it. We are not, as counsel by his own admission indicates, raising something new at the 11th hour, nor are we taking him by surprise by making this contention. This contention was made a long time ago, although technically not according to procedure. All we ask this Court to do is under Rule 15 give us a chance to put it in proper procedural shape so that the Court at its leisure can consider it when it is argued on briefs. Otherwise, we would be precluded from arguing this issue which we honestly believe to be substantial.

The Court: Counsel will agree that it is rather belated, will he not?

Mr. Hafer: Yes, of course I do, your Honor, but it has been in the case for a long time. Procedurally it has not been here.

[fol. 30] The Court: It was in the case, yes, in the motion to dismiss, and the Court overruled that motion.

Mr. Stauffer: If the Court please, we are being taken by surprise. We thought opposing counsel was satisfied on the issue, not having raised it in the pleadings earlier. We are prepared to proceed, and I think we must.

The Court: I don't believe I will permit it to be filed at this time. In view of the objection of the attorney for the plaintiff, I think it would be wrong.

You may proceed.

Thereupon, the Plaintiff called as a witness, Mr. IRWIN MOWRY, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Mr. Stauffer: This witness is being called under Rule 43, I believe, as an officer of the defendant.

Mr. Hafer: He is not an officer of the defendant and we will object to his being called as an officer.

Q. State your name, please.

A. Irwin Mowry.

Q. Your address?

A. 917 West Cole Road, Fremont, Ohio.

Q. How long have you lived there?

A. Two years.

Q. Where did you live before that?

A. At Route 1, Bloomville, Ohio.

Q. How long did you live there?

A. Eight.

Q. Eight years?

A. Eight.

[fol. 31] Q. Pardon me?

A. Eight years.

Q. Are you married?

A. Yes, sir.

Q. Any children?

A. One.

Q. What is your present employment?

A. I'm organizer for Teamsters Local No. 20.

Q. How long have you worked for Teamsters Local 20?

A. Since June, 1956.

Q. Who did you work for before that?

A. Teamster Local No. 625.

Q. Is Teamsters Local No. 625 still in existence?

A. It is not.

Q. What happened to it?

A. It merged with Local No. 20.

Q. How long did you work for Teamsters Local 25?

A. 625.



Q. 625. Approximately.

A. Since 1950.

Q. And what did you do before that?

A. I was a truckdriver.

Q. What did you do in 1956?

A. I was,—

Q. (Continuing) What were your duties then?

A. I was business agent for Teamsters Local No. 20.

Q. And as a business agent what were your duties?

A. Well, I organized, serviced various accounts that we had and negotiated contracts.

Q. What do you mean by "organized?"

A. Well, organize new places where we had no members and check and make sure where we did have members that they were union members and paid up.

Q. In 1956 did you work out of Fremont or out of Toledo?  
[fol. 32] A. I worked out of the Fremont office.

Q. Teamsters Local 20 has an office there in Fremont?

A. A sub-office, yes, sir.

Q. Was there any other business agent for Teamsters Local 20 working out of the Fremont office in 1956?

A. Assigned directly to the office?

Q. Yes.

A. One.

Q. Who was that?

A. Frank Kennedy.

Q. Who were the business agents for Local 20 working out of the Toledo office in 1956?

A. All of them?

Q. To the best of your recollection?

A. Well, there was the president, Lawrence Steinberg; secretary, Wesley Mencke. Then there was Edward Sulinger, William Herzig, Norman—Newman Walton, Homer Moller, Lawrence Evans or Larry Evans, William Reagan, J. N. Jamieson, John Cassidy and Ivo Irwin.

Q. In 1956 what was the geographical area of Teamster Local 20 for which it was responsible?

A. An eleven county area in Northwestern Ohio.

Q. And was Seneca County one of those counties?

A. Yes, it was.

Q. Sandusky County?

A. It was.

Q. Lucas County?

A. Yes.

Q. Is Plaintiff's, Mr. Morton's, office in Seneca County?

A. Yes.

Q. Have you ever visited his premises?

A. Many times.

Q. His property?

A. Many times.

[fol. 33] Q. Did you visit there in 1956?

A. Yes.

Mr. Hafer: Your Honor, we will object at this time and ask for a ruling on the question of calling this witness as an officer of the defendant under Rule 43. I believe now that the testimony is in, it is quite clear that he is not an officer and counsel is bound by answers he may receive.

Mr. Stauffer: I believe the witness stated that he was an officer.

The Court: Are you now an officer?

A. I am not.

The Court: Have you ever been an officer?

A. Never of Local 20, no, sir.

Mr. Stauffer: We will contend, your Honor, that a business agent of a union is an officer of the union.

The Court: I have no authority on it. You may proceed, but you may be bound by what he says.

Mr. Stauffer: Was the last question answered?

(Thereupon, the last question and answer were read, as follows: "Q. Did you visit there in 1956? A. Yes.")

By Mr. Stauffer:

Q. In the early part of 1956 do you know whether any of Morton's employees were members of Teamsters Local No. 20?

A. Yes.

Q. Do you know about how many truck driving employees Morton had in early 1956?

A. Well, if you are speaking of early Spring I would say about four or five.

Q. Then coming to the summer of 1956.

A. It increased.

Q. To about how many?

A. Approximately 40. That is an approximate figure because I don't remember.

Q. Do you know whether or not any of those truck drivers [fol. 34] ing employees were members of Defendant's Local 20 in 1956?

A. Yes.

Q. Do you know about what part of them in the summer-time when there were about 40, as you testified?

A. They all became members when they were there any length of time.

Q. And that was the situation in the summer of 1956?

A. That is correct.

Q. Do you know whether or not those members paid dues to Teamsters Local 20?

A. They did.

Q. How did you know that?

A. Because I collected the money.

Q. In the early part of August, 1956, did Morton have a contract with Teamsters Local 20?

A. I don't remember when the first contract was negotiated.

Q. So that you don't know whether there was one?

A. I couldn't honestly say.

Q. All right.

Mr. Gallon: Does counsel have a copy of this exhibit?

Mr. Stauffer: We will obtain one.

By Mr. Stauffer:

Q. I hand you what has been marked for identification Plaintiff's Exhibit 1 and ask you whether or not that is a fair representation of plaintiff's place of business and office?

A. It is not a complete view of all the entrances to the place. There is another entrance to the grounds that isn't shown on this picture.

Q. What do you see in that picture?

A. An aerial view of the garage, Mr. Morton's home and the parking lot of the trucks and the small dock that he had built for handling Michigan Motor Freight.

Q. Do you see his office?

[fol. 35] A. I do.

Q. Do you know whether or not Morton has any other office or garage?

A. No, I don't.

Q. What was the situation in 1956, if you know?

A. There was none that I knew of.

Q. Referring to this exhibit where was the other entrance you referred to?

A. Right here (indicating).

Q. You are indicating further east?

A. Yes; just past this building it is possible to come across here (indicating).

Q. Would you place or mark the corner of the picture in the direction where you say there was another entrance and initial it?

A. Well, it was here. I would have to mark it here (indicating).

Q. All right.

A. I will put an initial there (indicating).

Q. Mr. Mowry, do you know whether that other entrance that isn't shown was on Mr. Morton's property or somebody else's?

A. I don't know who owned the property. I don't know where Mr. Morton's property line was at.

Mr. Stauffer: The plaintiff will now move that this now be introduced into evidence.

The Court: Without objection it will be admitted.

Mr. Hafer: There is no objection to that, your Honor.

By Mr. Stauffer:

Q. Mr. Mowry, did you take part in any negotiations on behalf of Teamsters Local 20 looking towards obtaining a contract with Morton in 1956?

A. I attended one meeting, yes, sir.

Q. Where was that meeting?

A. At the Teamsters' Hall in Fremont.

Q. About when did that take place, if you know?

A. I don't remember the date, sir.

[fol. 36] Q. If Morton's employees later struck was this meeting before or after the strike?

A. That meeting was before the strike.

Q. About how long before the strike, if you know?

A. Oh, a few days. I don't know.

Q. Who was there?

A. You were there, for one, and Mr. Morton was there, Larry Evans was there, I was there, and a committee composed of,—I don't know, one, two or three; I don't know how many was there from the employees. I don't remember.

Q. Did you attend the prior meeting of just the employees of Morton and the representatives of Defendant's Local 20?

A. Prior to that meeting?

Q. Yes.

A. Yes, sir.

Q. When did that meeting take place in reference to the one that you just testified about?

A. Quite some time before that. I would say a minimum of two weeks.

Q. And who was at that meeting besides Morton's employees?

A. Larry Evans and myself, I believe.

Q. Anyone else to your recollection?

A. Not that I can recall.

Q. About how many of Morton's employees were there?

A. I would be strictly guessing because I don't remember the exact number, but I would say 14 to 16.

Q. What was the purpose of that meeting?

A. To determine what the employees wanted in a contract with Lester Morton.

Q. Did anyone preside at that meeting?

A. You mean have sole control of the meeting?

[fol. 37] Q. No, not sole control, but did anyone stand up and state the purpose of the meeting and conduct the meeting?

A. Well, it was jointly between Evans and myself.

Q. Was anything decided at that meeting?

A. There were certain things which I can't recall. I mean I don't recall all that went on.

Q. Can you recall anything that was decided at that meeting?

A. They asked for an increase in pay; they asked for showup time, too.

Q. By "they" you mean Morton's employees?

A. Yes, I am speaking of Morton's employees, and a different method of computing the overtime.

Q. Was anything decided as to what you would do or how you would try to get those things?

A. Well, at a meeting such as that the employees present their demands and then it is customary to put together a proposal to the employer, which was done.

Q. Mr. Mowry, did you attend the meeting of Morton's employees at which a strike vote was taken?

A. I did.

Q. Was that at this meeting you are presently testifying about?

A. No, sir.

Q. When did the strike vote meeting take place?

A. The exact date I couldn't tell you.

Q. But it took place before the strike?

A. It was either one or two days before the strike.

Q. It didn't take place after the strike?

A. No, sir.

Q. So that this is the third meeting you have testified you attended?

A. I attended many meetings.

Q. But you testified about three thus far?

A. At that particular time, yes.

[fol. 38] Q. With regard to the strike vote meeting, you were there?

A. I was there.

Q. Was any other business agent from Teamsters Local No. 20 present there?

A. Lawrence Evans was there.

Q. Any other business agents?

A. Not that I can recall.



Q. And where did that take place?

A. At Teamsters' Hall in Fremont, Ohio.

Q. And about how many employees of Morton were there?

A. Around 30.

Q. What was the purpose of that meeting?

A. It called for just that, a strike vote.

Q. And who conducted that meeting?

A. Mr. Evans.

Q. Was the strike vote taken?

A. It was.

Q. How was it taken?

A. By secret ballot.

Q. What was the result?

A. Again, I would have to be giving approximate figures, but I believe that there was 20 votes for the strike and 5 voted against the strike and two or three didn't vote, left blank ballots.

Q. I thought you testified it was a secret vote.

A. It was.

Mr. Hafer: I object. He is impeaching his own witness.

By Mr. Stauffer:

Q. Was that result announced there at the time, Mr. Mowry?

A. It was.

Q. Was it decided as to when the strike would commence?

A. That I don't recall.

[fol. 39] Q. Did a strike of Morton's employees in fact commence thereafter?

A. There did.

Q. About how long after that meeting did the strike take place?

A. I don't remember whether it was a day or two that elapsed in there.

Q. What month was that?

A. August.

Q. Of what year?

A. 1956.

Q. So that the strike of Morton's employees commenced in the month of August, 1956?

A. That is correct.

Q. What time of the day did the strike commence?

A. In the early morning.

Q. Do you happen to recall what day of the week that was?

A. No, I don't.

Q. To refresh your recollection, was it Friday, the last working day of the week?

A. I don't remember what day it was.

Q. All right. Did you appear at Morton's property the first day of the strike?

A. I did.

Q. About what time of the day did you appear?

A. Approximately six A. M.

Q. What did you see when you got there other than the buildings, and so forth?

A. The employees were starting to congregate across the street, over at the root beer stand across the street.

Q. How many of them were there?

A. Well, again, I didn't count, but I would say,—

Q. (Interposing) Approximately how many employees were there?

[fol. 40] A. When I got there?

Q. Yes.

A. Five or six.

Q. And how long did you stay?

A. Until about nine o'clock.

Q. What was the most or the highest number that were there at one time during your stay there from about six to nine A. M.?

A. I couldn't answer exactly; I didn't count them.

Q. Approximately.

A. Well, most of them come and went during that time.

Q. Would you answer the question if you can? What was the approximate number that were there at one time between six and nine A. M. the first day of the strike?

A. Well, when you say "there" do you mean both places, across the road and at the premises?

Q. Yes.

A. Thirty.

Q. What was across the road?

A. A root beer stand and a parking lot. The boys drove in there and parked their cars.

Q. Does that root beer stand appear in Plaintiff's Exhibit 1?

A. It does. (Indicating.)

Q. Did you return again that day, Mr. Mowry?

A. I was,—I may have left before nine o'clock and then came back, but I don't believe I was there after nine o'clock.

Q. Do you know whether or not any of Morton's trucking employees, or truck driving employees, worked that first day of the strike?

A. Not to my knowledge.

Q. Do you recall whether the second day of the strike was a Saturday or Sunday or a regular work day?

A. I couldn't answer that. I don't remember whether [fol. 41] it was,—I know it was close to the weekend, but I don't know what day of the week it started on.

Q. You did go back to the Morton property following the first day of the strike?

A. I was back there and served on the picket line duty from approximately 11 o'clock to 7 o'clock A. M. the second day of the strike.

Q. What was the greatest approximate number of pickets that you observed there at any one time during that shift of yours the second day of the strike?

A. Well, there was three of us on duty, and when you'd change shifts there would be six. There was the three that was coming and the three that was leaving.

Q. How long did the strike last?

A. I don't remember the exact length of time. I don't know that, sir.

Q. Approximately.

A. Again, I wouldn't know that because I left the picket line and wasn't around it.

Q. Was it longer than one week?

A. Yes.

Q. Was it longer than two weeks?

A. I couldn't answer that; I don't know.

Q. All right. You testified that the plaintiff, Mr. Morton, did meet with you prior to the strike?

A. Yes.

Q. What was the purpose of that meeting?

A. To negotiate a contract.

Q. Do you recall when that took place in reference to the first day of the strike?

A. I know there was more than one meeting, but I couldn't tell you the exact dates, how long before or anything like that.

Q. Do you know whether or not Mr. Morton met with you and other business agents the day before the strike?

[fol. 42] A. I don't know just exactly if it was just the day before the strike.

Q. But Mr. Morton did meet with you at least once before the strike?

A. Yes, more than once before the strike.

Q. And as of the time the strike commenced had he refused to meet with you again?

A. I wasn't conducting the negotiations; I couldn't answer that.

Q. You don't know?

A. No.

Q. But you were there?

A. In and out.

Q. I see. Mr. Mowry, do you know whether or not any court action was taken or requested with respect to the strike about which you are testifying?

A. A temporary injunction was issued. There was a court action in the Seneca County Common Pleas Court.

Q. I hand you what has been marked Plaintiff's Exhibit 2 for identification and ask you to look at it, please.

By Mr. Stauffer:

Q. Mr. Mowry, have you seen a duplicate of Plaintiff's Exhibit 2 prior to today?

A. I would have to say I don't think so.

Q. You don't know whether or not you were served with a copy of it by a Sheriff sometime in the past?

A. I was served with a copy, but I wouldn't say that was an exact copy of it.

Q. What was it you were served with a copy of?

A. Well, our attorney handled it. I turned it over to him. I mean I—

Q. (Interposing) Did you read it at that time, at the time you received it?

A. Yes. I was named as a defendant.

[fol. 43] Q. When was this that you received this thing we are talking about?

A. I don't remember the exact date.

Q. Well, what year was it? It had to do with this strike you are testifying about, did it not?

A. Yes.

Q. Do you recall about how long after the strike commenced it was you received this?

A. No, I don't.

Q. Approximately.

A. It would be a guess, pure and simple. I don't know.

Q. Would it have been less than a week?

A. No, it was greater than a week.

Q. You are sure about that?

A. I believe. I am not sure. I said I don't remember.

A. All right.

Mr. Stauffer: We would like to move that this be introduced into evidence.

Mr. Hafer: We object to the receipt of the exhibit. There has been no foundation laid for it and there is no showing of its relevance to this particular case or the circumstances under which it was obtained.

The Court: What is the document? I don't know what it is.

Mr. Stauffer: If the Court please, it is a certified copy of the restraining order issued by the Court of Common Pleas for Seneca County.

A. If that is what it was, I was served with it.

The Court: It will be admitted.

By Mr. Stauffer:

Q. What was your understanding, Mr. Mowry, of this court order that you received back in 1956?

A. Actually, I wasn't involved in the thing and wasn't [fol. 44] near the picket line other than to drive down the road there.

Q. But you were a defendant in this lawsuit in the Seneca County Common Pleas Court, were you not?

A. That is correct, but I was represented by counsel.

Q. And you were served with a copy of this order?

A. That is correct.

Q. And what was your understanding of what that order required you to do or not to do?

Mr. Hafer: The order, your Honor, speaks for itself. We object to that.

The Court: I think that is true.

The Court: Did you read the order, Mr. Mowry?

A. Not that I recall. I turned it over to the counsel.

By Mr. Stauffer:

Q. Mr. Mowry, with regard to this strike against Morton did you visit or go to the property of any of Morton's customers or suppliers during the strike?

A. I went to the Louis O'Connell Company one time or maybe twice during the strike, but after the second day I had nothing whatever to do with the strike. I went there on other duties.

Q. You went where on other duties?

A. Louis O'Connell Company. There are members there.

Q. When did you go to the Louis O'Connell Company?

A. I believe—and again this happened five years ago—that I was there the next day.

Q. The next day after the strike commenced?

A. That's right, after the start of the strike.



Q. What is the Louis O'Connell Company?

A. It is a building supplier, ready-mixed concrete, and I think they still handled coal.

[fol. 45] Q. Where is it located? In what city is it located?

A. Tiffin.

Q. And the O'Connell Company was a customer or a supplier of Morton at that time?

A. They were not a supplier of Morton's; they did—or Morton did some trucking for them.

Q. Describe that trucking. What was the nature of that trucking?

A. Well, I wouldn't be aware of all of it, all of what took place, but I do know that they were hauling sand and crushed stone.

Q. Who was hauling sand and crushed stone?

A. Lester Morton's trucks.

Q. Where was he hauling it?

A. To the ready-mix plant.

Q. Whose ready-mix plant?

A. Louis O'Connell's.

Q. And what did Louis O'Connell have to do with this sand and gravel?

A. Made ready-mix concrete out of it.

Q. Louis O'Connell had a ready-mix concrete plant?

A. That's right.

Q. There in Tiffin?

A. That's correct.

Q. How many employees at that time did Louis O'Connell Coal Company have, approximately?

A. Oh, 14 or 15.

Q. Were any of those employees members of Teamsters Local 20?

A. I would say all of them.

Q. And you say you went there once or twice?

A. In the course of my other duties, yes.

Q. In the early part of the strike against Morton?

A. Well, I made regular weekly visits to the various places.

[fol. 46] Q. Yes, I understand, and one of those visits was during the early part of the Morton strike?

A. Yes.

Q. Do you recall who you talked to there at that time?

A. No, I don't. I possibly talked to our steward, but I don't remember it.

Q. You are not sure you talked to him? What is the answer?

A. I don't remember.

Q. What was the steward's name, if you recall?

A. I wouldn't want to say because I don't remember.

Q. That's all right. During the six months preceding the strike against Morton how many times did you visit the O'Connell property?

A. Approximately once a week.

Q. What did you do on those visits?

A. Well, we had a system set up in our local union that we made an honest effort to visit any place where we have members once a week or once every two weeks.

Q. Mr. Mowry, when you received this court order, Plaintiff's Exhibit 2, which you do not recall having read and which you have testified you handed to your union's attorney, did he give you any advice with respect to it?

A. There was no need of any advice because I had no connection with the strike at that time.

Q. But you were a party defendant to the suit?

A. That is correct; I was named.

Q. And you did appear on the picket line at least one day?

A. Yes.

Mr. Stauffer: You may inquire.

[fol. 47] Cross examination.

By Mr. Hafer:

Q. Prior to the time of the strike at Morton's in the summer of 1956 you testified that you had members employed at Morton's, and you testified as I recall, Mr. Mowry, that all of them became members after they were there any length of time.

Will you tell us in your own words in a little more detail how many of the truckdrivers were employed at Mor-

ton's in, let us say, July and the early part of August, were paying dues and paying members of Teamsters Local 20?

A. The understanding with Mr. Morton was that after they worked there for thirty days they became members of the local.

Q. You had this understanding prior to the time Local 20 struck in August of 1956?

A. We had that arrangement for quite some time prior to that time, yes, sir.

Q. There was another local, you testified, that was merged with Local 20, Local 625 I believe you said?

A. That's right.

Q. Were the drivers of The Morton Trucking Company members of Local 625 at the time that local was in existence?

A. Yes, sir.

Q. And for what period of time had the understanding with Lester Morton with respect to his truckdrivers joining the then Local 625 been in effect; when did this start?

A. From approximately 1950.

Q. Will you tell us in your own words how it came to pass that after all these years having a majority of these truckdrivers as members of the Teamsters that the strike in August of 1956 occurred? What precipitated that strike? [fol. 48] A. The members themselves requested that we get a contract.

Q. At this time it was Local 20 that was representing them?

A. That is correct.

Q. Prior to that time there had been no written contract?

A. No. We had made many attempts, but we never got one.

Q. How many meetings do you recall attending with Mr. Morton and representatives of the union prior to the strike in July and August of 1956?

A. I couldn't make a direct statement about it; I would say approximately three.

Q. Some of these meetings were in July, were they not?

A. I believe so.

Q. How many meetings with the employees of Morton were held in this same period of time?

A. About three.

Q. One of the meetings was called simply for the purpose of finding out what specific contract proposals should be made by the local union on behalf of these drivers, was it not?

A. That is correct.

Q. And one of the meetings with the employees of Morton Trucking Company was for the purpose of holding—or finding out what specific contract demands should be made on their behalf by Local 20, is that not true?

A. That is correct.

Q. And another of the meetings was for the purpose of holding a strike vote?

A. That is correct.

Q. The strike vote meeting, as I understand your testimony, was only a few days before the strike itself?

[fol. 49] A. That is correct.

Q. Explain the procedure which was followed in the taking of a strike vote, if you will, please?

A. Well, Mr. Evans made a report of the negotiations to date and one of the members,—and I believe there was minutes taken of the meeting. One of the members made a motion and it was seconded and voted on that we take a strike vote. Our regular form, which is a regular strike ballot,—

Q. (Interposing) A printed ballot?

A. A printed ballot.

Mr. Stauffer: I wonder if these documents wouldn't be the best evidence as to what is being testified to here?

Mr. Hafer: I am asking for the procedure now.

The Court: Are those ballots in existence now that you know of, Mr. Mowry?

A. I could be wrong as to the particular ballot that was used now. We have had many strike votes, but it was a paper ballot, that I will say, and I believe they are in existence yet.

By Mr. Hafer:

Q. I show you what has been marked as Defendants' Exhibit A for identification purposes and ask you to look at that and tell us in your own words what Exhibit A consists of.

A. These are a form that we have that people sign when they attend a meeting so that we have a record of who was present at that meeting.

Q. Is this a customary practice of your local union?

A. It is.

Q. Was this practice followed on the night the strike ballot was taken?

A. Yes, it was.

Q. And does Defendants' Exhibit A,—does that exhibit indicate they are attendance cards that were filled out by the members who attended the strike vote meeting?

[fol. 50] A. I believe they are.

Mr. Hafer: We move the Court to receive Defendants' Exhibit A.

The Court: Without objection it will be admitted.

Mr. Hafer: Let the record show that we have provided counsel with photostatic copies of the several documents which constitute the composite Defendants' Exhibit A.

Mr. Stauffer: No objection.

Q. I show you what has been marked Defendants' Exhibit B for purposes of identification and ask you to tell the Court in your own words what that exhibit is.

A. It is the strike ballot as used by our local when we conducted a secret strike ballot.

Q. This is a standard form which is used?

A. This is a standard form which is used.

Q. Now, this particular stapled exhibit which has a number of individual strike ballots has been in the possession of the union since it was taken in 1956, was it not?

A. That is correct.

Q. And has been part of your union's files?

A. It was in Fremont until approximately 1959 and then it was turned over to our attorney.

Q. Is this document which we have marked as Exhibit B, a composite document, the actual paper ballots which were distributed, filled in by the employees of Morton Trucking Company at the strike vote meeting preceding the August, 1956, strike?

A. Yes, sir.

Q. Tell us mechanically what procedure is followed, or was followed, in the distribution and marking of the ballots which compose Defendants' Exhibit B.

A. At all strike ballots two people from the group involved pass out the strike ballots and it is watched very closely that no more than one ballot is given to an individual, and then the same two people collect the ballots after they are marked and they are folded once in the middle, as the crease will show, so that no one can tell how anyone is voting. Then they are collected by the same people who have distributed them. That is our normal procedure.

Q. Are they then counted by the men in charge of the meeting?

A. They are counted by the people that both distributed and collected them in the presence of the men in charge of the meeting.

Q. So that the election observer is a man from the rank and file, a member of the union?

A. Yes, and they were counted in front of the full body of the union.

Q. He distributes the ballots, or the two of them distribute them, pick them up and then they count them?

A. That is correct.

Q. And Defendants' Exhibit B are the strike ballots taken at the strike vote meeting in connection with the Morton strike of August, 1956?

A. That is my belief.

Mr. Hafer: We offer composite Defendants' Exhibit B and wish to state on the record that photostatic copies of the individual ballots which make up the composite exhibit have been afforded counsel for the plaintiff here.

The Court: Without objection they will be admitted.



Mr. Hafer: Is there an objection?

Mr. Stauffer: It has just been admitted.

By Mr. Hafer:

Q. What reason, if any, did Mr. Morton give you in your negotiating meeting with him preceding the strike for declining to sign a contract?

A. Well, his standard argument always was that if we got everybody else signed up he would sign a contract.

[fol. 52] Q. Keep your hand away from your face, Mr. Mowry, so that the Court and the Reporter can hear you. Will you now repeat your answer?

A. His standard argument always was that if we got everyone else signed up that he would sign a contract.

Q. On the day of the strike you have testified previously you personally appeared at Morton's premises at about 5:30 or 6:00 o'clock in the morning, is that correct?

A. That is correct.

Q. How long on that particular day were you there?

A. Until approximately nine o'clock.

Q. In the morning or evening?

A. No, in the morning.

Q. Did you then leave the premises or did you go someplace else about nine o'clock?

A. I don't recall; I may have left and come back.

Q. How long were you at Morton's premises upon your return?

A. I don't believe I was there any later than nine or 9:30 at the very latest.

Q. All right. What was the normal reporting time for Morton's drivers?

A. That depended upon the job they were on. They went to work anywhere from 4:30 or 5:00 to approximately 7, I believe.

Q. On the day of the strike how many drivers were at the premises when you arrived?

A. Four or five.

Q. Did more show up later?

A. Yes.

Q. Now, we have in the record an aerial photograph of the premises of the Morton Trucking Company. I would like to have you put this so that the Court can see it, Mr. Mowry, and tell us while you were at the premises the drivers were standing.

[fol. 53] You testified, you will recall, that some were by the root beer stand and some were in front of Morton's. I would like you to point out for the Court where the drivers were standing at the time you were at the premises on the first day of the strike.

A. When I first got there?

Q. Yes.

A. I was parked right along this line, or that is where they had their cars parked. Right here (indicating).

Q. Now, when you say "right along this line" you are indicating the side of the road by the root beer stand?

A. I am indicating the property of the root beer stand.

Q. There is a wide area around the root beer stand as shown on this photograph. Is that a parking area?

A. That is a parking area.

Q. Were any of those pickets or any of the drivers' cars, their personal cars, parked near or in this parking area of the root beer stand?

A. We were parked in here and over here (indicating).

Q. And you are indicating the parking area around the root beer stand?

A. That is when I arrived in the morning, that is correct.

Q. Were any of the cars belonging to the drivers parked on the other side of this road which would be in the area of the Morton premises, in front of the Morton premises?

A. When I arrived?

Q. Yes.

A. No.

Q. Later on while you were present at the picket line were there cars there?

A. Yes.

Q. Now, you will note, I believe, on this photograph that there are two drive areas leading into the front of Morton's premises, is that correct?

[fol. 54] A. That is correct.

Q. Will you tell us where the drivers' cars were parked that were parked in front of Morton's premises?

A. There is quite a wide space between the curb and there is a ditch which isn't shown on the picture here, and between the curb and the ditch the cars were parked, and my car, my personal car, was parked up here between the pole and the ditch.

Q. You are indicating a telephone pole, are you not?

A. That is correct.

Q. Now, were any of the cars parked in such manner as that they blocked the driveways which are indicated on the photograph?

A. Not at any time when I was there.

Q. You were there about three hours the first day?

A. That is correct.

Q. On the second day you were there, you were there for a seven-hour shift?

A. Eight hours.

Q. An eight-hour shift. Excuse me.

Now, at any time during that eight-hour shift on the second day that you were there on duty were any cars parked in such a manner as to block the driveways indicated?

A. No, sir.

Q. There were cars, however parked in the area adjacent to Morton's premises and off the street between the driveway areas, were there not?

A. That is correct.

Q. Now, during the three hours that you were at Morton's premises on the first day of the strike and during the eight hours that you were at the premises on the second day of the strike were any physical altercations between any of the union agents and any of the drivers?

A. No, sir.

Q. Were there any to your knowledge between any of [fol. 55] the union agents and any of Morton's—Mr. Morton or any of his management people?

A. No, sir.

Q. At any time that you were in the picket line for these two days was there any physical violence against any person?

A. No, sir.

Q. At any time when you were on the picket line during the first two days of the strike did any person physically block, either with his automobile or by standing in the area, the driveways?

A. Not that I know of.

Q. To your knowledge, did any person at any time or in any way block the driveways while you were on duty?

A. Not to my knowledge.

Q. Were you present at the time the Sheriff showed up?

A. I was present the first morning when the Deputy Sheriff came down and he requested that I remove my car from where it was parked, which I did.

Q. Where did you put it?

A. Either on the side of the road or over in the root beer stand; I couldn't say which.

Q. Now, you testified that you went to the O'Connell Coal Company once or twice at the start of the strike, did you not?

A. Yes.

Q. Now, I think the record is somewhat unclear on this point. In addition to the Morton strike you had regular calls at the O'Connell Coal Company, is that correct?

A. That is correct.

Q. But you made at least one specific visit to the coal company in connection with the Morton dispute, did you not?

A. No, I did not.

Q. All right. At any time you made your regular visits [fol. 56] at or around the date of the strike did you discuss with the O'Connell management, any of them, the Morton strike?

A. I probably did.

Q. Do you recall any specific conversation?

A. No, I don't.

Q. At any time that you were visiting the O'Connell Coal Company after the start of the Morton strike did you observe any pickets of Local 20 at the O'Connell Company premises?

A. No, sir.

Q. Do you know or to your knowledge, Mr. Mowry, did Teamsters Local 20 ever engage in picketing at the premises of the O'Connell Coal Company?

A. No, sir.

Q. What did the union seek to achieve by the strike? What was its goal?

A. To get a signed contract.

Q. Covering the truckdrivers whom you had as members?

A. That is correct.

Q. There are two points we want to clear up. No. 1. Did you talk to any of the management representatives at O'Connell Coal Company before the Morton strike with respect to the situation at Morton's?

A. Yes.

Q. To whom did you speak?

A. Howard Magers, Jr.

Q. What is Mr. Magers' position at the O'Connell Coal Company?

A. I believe he is president.

Q. About how long before the strike did your conversation occur with him?

A. Possibly three or four days.

Q. What was the nature of your conversation?

[fol. 57] A. Oh, I told him that we were attempting to get an agreement with Lester Morton and if we didn't get an agreement there might be a strike.

Q. Did he ask you to do anything in the event there was a strike?

A. He said, "In the event there is a strike would you please let me know so that I can get my material hauled."

Q. After the strike was called did you telephone or contact Mr. Magers to advise him of the existence of the strike?

A. I called him on the telephone.

Q. After the strike was started?

A. Yes, sir.

Q. What was the substance of your conversation with Mr. Magers on the telephone?

A. As near as I can recall, I said, "Howard, we've got Lester Morton on strike."

Q. Did you say anything else to Mr. Magers?

A. I may have asked him for his cooperation. I don't remember. I mean I don't remember the exact wording of my conversation.

Q. Those two contacts then are the only ones you had with the O'Connell Coal Company with specific reference to Morton Trucking Company?

A. Yes.

Q. One last point. You testified that Mr. Morton's position with respect to signing a contract before the strike was that he wouldn't sign until you had everyone else signed up?

A. That is correct.

Q. Did Mr. Morton indicate who he meant when he referred to "everyone else"?

A. Yes. He spoke of,—I can't think of the man's name. He is right down the street from him. He had four or five trucks.

[fol 58] Q. A trucking competitor?

A. A small operator with four or five trucks.

Q. The point of Mr. Morton's remark about everyone else was his competitors in the trucking business?

A. Anyone that had a dump truck that operated in that area.

Mr. Hafer: Nothing further of the witness.

Mr. Stauffer: I would like to ask him one or two more questions.

The Court: Very well.

Redirect examination.

By Mr. Stauffer:

Q. Mr. Mowry, are you familiar with the procedure under the Labor-Management Relations Act whereby under certain circumstances the unions may be certified by the National Labor Relations Board as the representative for certain purposes of an employer's employees?



The Court: He may answer it if he knows or if he is familiar with it.

A. Yes.

Q. Do you know whether or not, Mr. Mowry, Teamsters Local 20 or its predecessor Teamsters Local 625 was ever or has ever been certified by the National Labor Relations Board as the representative of the plaintiff's employees?\*

Mr. Hafer: We object to the relevancy, materiality and competency of the evidence.

The Court: He may answer if he knows.

Mr. Hafer: May we have a continuing objection to this line of questioning, your Honor?

The Court: You may have it.

Q. You may answer the question.  
[fol. 59] A. Restate the question.

The Court: Read the question.

(Thereupon, the last question was read to the witness by the Reporter.)

A. Not to my knowledge.

Q. Mr. Mowry, you have testified that you spoke with Mr. Howard Magers of The Louis O'Connell Coal Company after the strike against Morton began, is that true?

A. That is correct.

Q. You testified that you told Mr. Magers that you would appreciate his cooperation or words to that effect?

A. Again I have to repeat that I don't remember the exact conversation. I did tell Mr. Magers that I would let [fol. 60] him know if there was a strike, which I did. I don't remember the conversation.

Q. And when you did let him know about the strike what did you tell him?

A. I don't remember the exact conversation.

Q. But you have testified here that you asked for his cooperation?

A. I said I might have, I might have, I don't remember the conversation.

Q. But you don't deny that you did speak with him following the strike and that you might have asked for his cooperation?

A. I don't deny that I talked to the man, no.

Q. And that you may have asked for his cooperation?

A. I don't remember what I did say.

Q. But you don't deny that you may have?

A. I may have used words to that effect.

Mr. Stauffer: I think that's all.

The Court: That will be all. We will recess at this point until one o'clock.

Afternoon Session, Monday, April 24, 1961,  
1:00 o'clock P. M.

The Court: You may proceed.

Thereupon, the Plaintiff called as a witness, JOHN W. COMBS, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. State your name, please.

A. John W. Combs.

[fol. 61] Q. What is your address, Mr. Combs?

A. I live at 10—9th Street, or Avenue, Tiffin, Ohio.

Q. Do you have any children?

A. No, sir.

Q. You are not married?

A. No, sir.

Q. Are you presently employed?

A. No, sir.

Q. Did you ever work for the plaintiff, Lester Morton?

A. Yes, sir, I used to work for him.

Q. Did you work for Lester Morton in 1956?

A. Yes, sir, I did.

Q. When did you start to work for Lester Morton?

A. The first part of 1956. It has been so long I can't remember exactly the date and month, but in the Spring of 1956.

Q. Speak more distinctly, please.

A. Yes, sir.

Q. After you started to work for Morton did you work for him throughout the year 1956?

A. Yes, sir.

Q. Did you belong to Teamsters Local 20 in 1956?

A. Yes, sir, I did.

Q. When did you join that union?

A. When I first started working there I signed to join the union.

Q. Were you a member of Teamsters Local 20 in the middle part of the summer of 1956?

A. Yes, I was.

Q. What did you do for Mr. Morton?

A. I drove a truck for him.

Q. What kind of a truck?

A. A tandem, what they call a tandem.

Q. What is a tandem?

A. That's a two-axle truck.

[fol. 62] Q. A dump truck?

A. Yes, sir.

Q. Did you attend any meeting of Morton's employees while you were employed there?

A. Yes, I attended a union meeting.

Q. Where was that?

A. In Fremont.

Q. When was that?

A. I forget. It has been so long ago that I can't recall exactly when it was.

Q. Did a strike take place in August, 1956, in which you participated?

A. Yes, it did.

Q. Did this meeting take place before that strike commenced?

A. Yes. We had the meeting in Fremont. It was on a Friday night, I believe, and we come out on strike the next day. I believe it was on a Friday night.

Q. But the meeting took place the day before the strike?

A. Yes, sir.

Q. What happened the day of the strike?

A. Well, we come out on strike that night and the next morning we went out and some of the boys went back to work and some didn't.

Q. Did anybody go back to work that first day of the strike?

A. To my recollection, there was a few trucks come out that morning.

Q. What did you do, Mr. Combs, that first day of the strike, do you remember?

A. I stood on the picket line.

Q. About what time of the day of that first day of the strike did you appear at the Morton property?

A. Around eight o'clock in the morning.

Q. About how many pickets were there at that time?

. . . . .

[fol. 63] By Mr. Stauffer:

Q. About how many pickets were there at that time?

A. I would say around 25 men. That is a rough guess; 25 to 30, I would say.

Q. How long did you stay there on that first day?

A. I stayed there the whole day that first day.

Q. About how many hours do you mean, Mr. Combs, when you say you were there "the whole day"?

A. Offhand, I would say around 7 or 8 hours, just guessing.

[fol. 64] Q. And you left about what time?

A. I would say around three o'clock. Well, in the evening is when I left.

Q. Where did you go when you left the picket line?

A. I went home.

Q. Did you appear at Morton's property again during the strike, the duration of the strike?

A. Yes.

Q. And when was that?

A. The next day.

Q. What did you do out there that day?

A. We appeared most every day to stand picket until we got a summons and then they wouldn't allow but so many of us to stay on the picket line. So then we took it in shifts. We stayed, some of us, about eight hours apiece.

Q. Who wouldn't allow you to do what?

A. We was served with a notice that there wasn't but so many allowed—four I think it was—at a time to stand on picket over there.

Q. What kind of a notice was it?

A. It has been so long ago, but it was the Sheriff that served it to us.

Q. Was that a court notice or a court order?

A. Yes, sir.

Q. Did you stay at Morton's premises throughout the second day you appeared there?

A. Not hardly all the day I didn't, no.

Q. Did you do anything else that day with respect to the strike at Morton's?

A. No. It was probably a day or two later when we did go out, some of us did, when we went elsewhere.

Q. With respect to the second day of the strike, Mr. Combs, approximately what was the greatest number of pickets that were present there at any one time?

[fol. 65] A. I would say about—

Mr. Hafer: (Interposing) We object to the question until there is some foundation laid for this; that is, with respect to the meaning of the word "picket." Do you mean truckdrivers or a man carrying a banner? That is something else. At this time there is no foundation in the record. I don't know if the witness understands what he means.

The Court: You said that on the first day of the strike there were about 25 men present at Morton's premises or in the vicinity?

A. Yes.

The Court: Do you mean pickets?

A. It was the truck drivers that was working for Mr. Morton.

The Court: Were they all carrying signs?

A. Some was carrying signs. We had signs up there, and some was just sitting there. Just a few would carry signs at a time.

The Court: Now he has asked you about the second day.

A. Yes.

The Court: He has asked you how many men appeared there as pickets then.

A. To my knowledge, I would put it at about the same amount as the first day.

By Mr. Stauffer:

Q. When did you again appear there in addition to the first two days?

A. I don't know for sure, but I don't believe I come out the third day, but I was out the next day after that, and I believe that is the day we got the order.

Q. The order from the court?

A. Yes.

Q. Did you stay at the Morton property all day that day?

A. No, not all day I didn't.

Q. Where did you go then?

[fa] 66] A. I went back home. There was a sign for us to stay so many hours at a time, and then I would go home and stay there until my time came up to stand picket.

Q. What was the largest number of men you observed at the Morton property that third day you were there?

A. After we got the service paper from the court?

Q. Yes.

A. The largest number I seen after that was about six to eight at a time, at one time.

Q. Did you go any place else, and did you do anything any place else with respect to this strike?

A. Yes, sir.

Q. All right. What did you do?

A. We went out to Francis's Stone Quarry.

Q. Can you give us the full name of that company?



Can you give us the name of it or what it does?

A. It is a stone company, but I don't remember anything else about it.

Q. You mean the name of the company is France? Would that be the France Stone Company?

A. Yes, I think that's it.

Q. And where is that located?

A. It is out from Tiffin, Ohio; I would say around eight miles from Tiffin.

Q. Would that be near Bloomville, Ohio?

A. Yes. He has a quarry there, I believe.

The Court: Was this on the third day of the strike at Morton's?

A. Your Honor, it has been so long ago now that I couldn't say for sure if it was the third day or a little later.

Q. That was the third day you were at the property, was it?

A. Yes.

Q. It could have been a weekend day—or there could have been a weekend day or two in between, is that it?

[fol. 67] A. Yes, there could have been, but it has been so long ago I don't rightly remember.

Q. Yes, I understand. How did you happen to go to the France Stone Company property?

A. Well, Mr. Evans took me and my brother Joe out there first and we stood picket out there.

Q. Who is Mr. Evans?

A. That is one of the union officials.

Q. Of what union?

A. The Teamsters Union, Local 20.

Q. Where is the office of that Teamster Local?

A. In Fremont, Ohio.

Q. Who else besides you and Mr. Evans went out to the property of the France Stone Company?

A. Me and my brother Joe and Mr. Evans.

Q. Joe Combs?

A. Yes, sir.

Q. Your brother?

A. Yes, sir.

Q. Did you appear first at the Morton property that day?

A. Yes.

Q. What did Mr. Evans say to you?

A. That morning he told me and my brother that we had to go somewhere and so we got in his car and he drove out to the France's rock quarry, and then out there he put me at one entrance and my brother at the other and we put up signs that Mr. Morton was on strike at both entrances.

Q. This is the day you got the court order?

A. I can't say for sure. I believe it was a day before or right after we got the court order.

Q. Or perhaps right after you got the court order?

A. Yes, sir, it wasn't long after.

Q. Now, you mentioned something about a sign or signs out at France's, did you not?

[fol. 68] A. Yes, sir.

Q. Did you take those signs with you out there?

A. Yes, sir.

Q. More than one sign?

A. Yes, sir, there was.

Q. About how many signs did you take out to France's Stone Quarry that day?

A. There was a stack of signs in the car, but we just used around six of them, I would say.

Q. What did those signs say?

A. That Local 20 of Teamsters Union, to the best of my knowledge, was striking Lester Morton.

Q. Who drove the automobile out there to France's?

A. Well, I followed Larry out there in my car.

Q. You drove your own car out there?

A. Yes, sir.

Q. And Mr. Evans drove a car?

A. Yes.

Q. Was anyone else with Mr. Evans?

A. My brother Joe was with him.

Q. Joe Combs?

A. Yes, sir.

Q. And was anyone with you in your automobile?

A. No, I was by myself. I stayed at a different entrance to the quarry. I was over there by myself.

Q. Can you recall about what time of the day you left the Morton property for the France Stone Company?

A. I guess around ten o'clock in the morning.

Q. How far was the France Stone Company quarry from there?

A. Just guessing, I would say seven or eight miles.

Q. You drove directly there?

A. Yes.

Q. You were following Mr. Evans' automobile, were you?  
[fol. 69] A. Yes, sir.

Q. What did you do when you got there?

A. We drove there and when we first got there Mr. Evans took me around to one of the entrances. I parked my car there and put signs on the car, strike signs.

Q. Where was this, at the entrance?

A. Yes, of The France Stone Company.

Q. At the entrance of The France Stone Company?

A. Yes.

Q. What did Mr. Evans tell you?

A. He told me to stand picket there and that I would be relieved that evening.

Q. Did he then leave you or did he stay there with you?

A. He went back with my brother to the other entrance and I think he stayed with my brother for a while, but I don't know how long.

Q. But he did not stay with you?

A. No.

Q. You testified that there are two entrances to The France Stone Quarry in that locality?

A. Yes, for their truckers to go in and out. I think there are only two entrances to use.

Q. What did you do after Mr. Evans left you out there?

A. I got my picket signs out of the car, put one on the back and one on the front.

Q. Of what?

A. My car, and then I had one on the side. I stayed around, hung around there until I was relieved that evening.

Q. You stayed there until evening?

A. Yes, sir.

Q. Where was that? Where did you stay?

A. Right around the car next to the entrance to the quarry.

[fol. 70] Q. Where was your car parked with reference to the entrance to the quarry?

A. It was on the left-hand side of the road there where you enter into the quarry.

Q. How long were you there that day?

A. I would say around six hours.

Q. And you had started that morning at about ten o'clock?

A. It would have been about 10:30 that morning.

Q. Did you eat lunch?

A. I ate sandwiches.

Q. Did you leave the place to eat the sandwiches?

A. No, sir. Mr. Evans brought me the sandwiches.

Q. Did anyone else stand around there with you that day?

A. No. Mr. Evans come around there, but he didn't stay very long with me around there.

Q. When you left did anyone else take over your function there, your job?

A. I left the entrance where I was at and stood around the other entrance and there was another fellow there to take my place when I left.

Q. Did you then go back to the entrance at which you had been standing?

A. Yes. I come back around to the other entrance and got my brother and we went home, back home.

Q. Do you know whether anybody stood where you had been standing picket after you left?

A. I know there was another man sent to stand there.

Q. Who would that have been, if you know?

A. I can't remember exactly, but I believe it was Mr. Nye and Tallbee.

Q. Do you know his first name, Nye's first name?

A. No, I don't.

Q. Who was the other person, Tallbee?

[fol. 71] A. Yes.

Q. Do you know his first name?

A. No, I don't remember it.

Q. Would it be Ransom, R-a-n-s-o-m?

A. Ransom, yes.

Q. Did anyone pass by you as you were standing there at that entrance?

A. Yes. There was trucks going in and out where I was at; practically every once in awhile one would go in or out.

Q. Did you recognize any of the people in any of those cars or trucks?

A. No, sir. I didn't.

Q. Did you speak with any of them?

A. No.

Q. Do you know about what time The France Stone Company employees quit work that day?

A. I don't know for sure, but I believe they quit around five or six o'clock. I couldn't say for sure.

Q. And I believe you testified that you did go to the other entrance before you left that day?

A. Yes, I did.

Q. What did you see there, or who did you see there?

A. Me and my brother and Mr. Evans was there, and our reliefs, the guys that come to stand in our place was there.

Q. So that you saw at the other entrance your brother, Joe Combs?

A. Yes, sir.

Q. Mr. Evans and Mr. Tallbee?

A. Yes.

Q. And Mr. Nye?

A. Yes.

Q. What were they doing there when you arrived?

A. I think they was just by their cars and I think they [fol. 72] was getting instructions on where to go and how long to stay.

Q. Did you see any signs there?

A. Yes, we had signs at that entrance.

Q. Where were they located at that entrance to France's quarry?

A. There was one tacked up on a tree right near the entrance and one or two sticking on a car.

Q. What did those signs say?

A. That Local 20 of the Teamsters Union was on strike at Lester Morton's. I can't say exactly the way it was lettered. It has been so long ago.

Q. Did you return to the France Stone Company quarry again during the course of this strike?

A. No. I never did go back there no more. I just stayed there that one day.

Q. Did Mr. Evans take you any place else during this strike?

A. Yes.

Q. Where did Mr. Evans take you then?

A. We went over to Fremont, where Mr. Morton's trucks was working there. We went to Fremont, me and my brother Joe and Mr. Evans. We went over there.

Q. Is this the same Mr. Evans who took you over to the France Stone Quarry?

A. Yes.

Q. Where did you go at Fremont?

A. I don't recall the name of the contractor or the company that was doing the work.

Q. What kind of work were they doing?

A. It was,—they were blacktopping and concrete, too, but I never worked any over there, so I don't know exactly what kind of work Mr. Morton's trucks was doing over there.

Q. Do you know what kind of work the contractor was doing at that place?

[fol. 73] A. Building a highway.

Q. Do you know which highway it was he was building?

A. It was a bypass for Fremont.

Q. A bypass of the main route there?

A. Yes.

Q. So would you say it was Route 20 in that locality?

A. Yes.

Q. And this general contractor was building this bypass?

A. Yes, sir. We went over there.

Q. Who went with you at that time?

A. Me, my brother Joe and Mr. Evans.

Q. Where did you meet to go out there?

A. At Mr. Morton's.



Q. How did you happen to go along on that trip?

A. Mr. Evans asked us to go with him. He said that he had somewhere to go.

Q. Did he say why he wanted you and your brother to go along with him?

A. Not offhand he didn't, and then we went to Fremont.

Q. Who drove on that trip?

A. Mr. Evans.

Q. What happened when you got there?

A. When we got over there he got out of his car and talked to the man, the boss there, talked to him and asked him not to let any of Mr. Morton's trucks work there.

Q. Where was this man that Mr. Evans talked to on this particular job site?

Mr. Hafer: Objection. I move that the last answer be stricken on the ground that this conversation with a supervisory person is not relevant to prove a 303 violation. In the event the objection is overruled, your Honor, may we have a continuing objection the entire line of questioning.

The Court: What do you claim for this?

Mr. Stauffer: If the Court please, it hasn't been stated [fol. 74] here that this man spoken to by Mr. Evans was supervisory.

Mr. Hafer: He said "boss."

The Court: I caught the word "boss."

Mr. Stauffer: As a matter of fact, I think he was the boss. From that point we contend that we may introduce testimony with respect to state law violations and similar unlawful activity under the state common law under the cases we have cited.

Mr. Hafer: The Court is not without guidance from the defendant on this particular point because we do have a memorandum on file covering the pre-emption issue on damages, and to the extent of the state violations we have a memorandum on file with respect to the question of the legality of inducement of bosses or supervisory personnel. The cases uniformly hold it to be legal under 303.

We are going to waste a lot of time in my judgment if we continue with this line of questioning, which, under the cases, is not competent to prove damages.

Mr. Stauffer: If the Court please, he has taken the approach or position that we have been wasting our time from the outset of this litigation. Nevertheless, it is our position, and that is true in this Circuit particularly, that the Court may consider unlawful conduct, that is, unlawful conduct under state law under the Meadow Creek case.

Mr. Hafer: That was a case of literally hundreds of pickets, mass picketing, dynamiting, guns and other overt physical violence. I conceded that in my opening statement.

Here the witness is asked to testify not with respect to mass picketing, your Honor, but with regard to a conversation between a union officer and a management representative in which the management representative was asked for cooperation to keep certain trucks off the job. [fol. 75] I don't believe that can be represented as coming under the Meadow Creek case. That case dealt with overt violence.

The testimony sought to be elicited at this time is completely outside the factual situation involved in those cases which I cited in my memorandum. Those were violence cases, as I said before, and not applicable here where peaceful conduct is involved.

Mr. Stauffer: But the end result of the actions taken is just as grievous, since the plaintiff was practically ruined as a result of the action taken by the defendants here.

The Court: I am concerned more with the fact that this witness says that Mr. Evans made certain statements to some man out there at a job site. There is no identification of this man to whom he made the statement. It may or may not have a connection.

Mr. Stauffer: We would have to go further into it to establish that, your Honor.

The Court: Do you expect to connect it up?

Mr. Stauffer: Yes, your Honor.

The Court: Then you may proceed.

Mr. Hafer: May we have a continuing objection on the grounds previously stated?

The Court: Yes, you may have that.

Mr. Stauffer: Would you read the last question to the witness?

(Thereupon, the last question was read to the witness, as follows: "Q. Where was this man that Mr. Evans talked to on this particular job site.")

A. He was at a little shack there beside the road where the trucks would pull in and unload, or they would, I would say, pull in there for instructions or if something went wrong with the truck or anything. In other words, it is [fol. 76] just a little shack where a man would stay if he was supervising the job.

Q. Did you take part in that conversation?

A. No, sir, I didn't. I stayed in the car.

Q. You didn't overhear it then, did you?

A. The only thing I overheard is Mr. Evans asked the man about not letting Mr. Morton's trucks go in there, and he said, "I would like to go along with you."

Mr. Hafer: What did you say? That was the response to Mr. Evans' statement?

A. Yes.

By Mr. Stauffer:

Q. Did you overhear anything else in that conversation, Mr. Combs?

A. No, that was just about it.

Q. What happened next?

A. Well, from there we went back to the union Hall.

Q. In what city?

A. Fremont, Ohio.

Q. What did you do there, Mr. Combs?

A. We just sat around for a while and had a cup of coffee and then we went back to Tiffin where I got and picked up my car and went back home.

Q. This was all after you had been at The France Stone Company quarry?

A. Yes; to my recollection; I believe it was a day or two after. It has been so long ago I couldn't say for sure.

Q. But you think it was a day or two after?

A. Yes.

Q. Did Mr. Evans take you any place else during the Morton strike, Mr. Combs?

A. Yes, sir.

Q. Who went along that time?

A. There was me and my brother, James Marcum. I believe that was all then.

[fol. 77] Q. What happened on that occasion?

A. Well, one morning three of Mr. Morton's trucks came out and we followed them out to Maple Grove.

Q. They came out of where, these trucks you mentioned?

A. Out of Mr. Morton's.

Q. Out of his garage property?

A. Yes, from around the parking lot there.

Q. Where were you stationed then?

A. Out front.

Q. Out front of what?

A. In front of Morton's garage, on the picket line there.

Q. How many trucks did you say came out of the Morton premises on that occasion?

A. Three of them.

Q. Now, Mr. Combs, did you recognize the drivers of those three trucks of Mr. Morton's?

A. "Beany". I don't know if that's his real name.

Q. Would that be Vernon Bean?

A. He was one of the drivers.

Q. And who were the other boys, the other two drivers that you saw on that day?

A. I think Howard was one of the others.

Q. Do you mean Howard Stultz?

A. Yes.

Q. And there was one other person, is that correct?

A. Yes, sir.

Q. Who was that?

A. I don't remember his name.

Q. And they were driving Morton's trucks?

A. Yes, with a trailer behind,

Q. Single-axle dump trucks?

A. Yes.

Q. With a dump trailer; is that what you mean, Mr. Combs?

A. Yes.

[fol. 78] Q. Now, were those three trucks loaded or empty when you saw them that day?

A. They were empty as they came out.

Q. About what time of the day was that?

A. I would say around nine o'clock in the morning.

Q. What did you do then?

A. Well, me and James Marcum and my brother and Mr. Evans,—

Q. (Interposing) Joe Combs?

A. Yes, sir.

Q. And the same Mr. Evans was present there, is that it?

A. Yes, sir.

Q. The business agent for Teamsters Local 20?

A. Yes.

Q. What did you do on that occasion?

A. We got into the car and followed them.

Q. Whose car was that?

A. Mr. Evans'.

Q. How did you happen to do that?

A. Well, Mr. Evans asked us to go along, to follow them and to see where they was going.

Q. Where did you follow them to?

A. We followed them out to Maple Grove.

Q. To Maple Grove?

A. Yes, the rock quarry out there.

Q. Where is that?

A. That's about five miles north of Tiffin.

Q. What did you do there?

A. We went out there and went down in the rock quarry, turned around and came back almost to the scale house.

Q. Then what happened?

A. Then the trucks was loaded up.

Q. You saw them being loaded?

A. Yes. They went into the rock quarry. We drove into [fol. 79] the quarry, but we didn't stop there. We turned around and came out and came back up there and waited while the trucks got loaded up for the trip.

Q. What did you do then?

A. We followed them into Toledo.

Q. How many trucks were there leaving the Maple Grove Quarry?

A. Three.

Q. There were still three trucks?

A. Yes.

Q. How many people were in this car you were in at that time, Mr. Combs?

A. There was four of us, counting Mr. Evans.

Q. That would be yourself, Mr. Evans, this Marcum fellow and Joe Combs?

A. Yes, sir.

The Court: The trucks were loaded with stone at the quarry?

A. Yes, sir.

The Court: With No. 8's?

A. I don't remember, sir.

Q. Is that a classification of sand?

A. Yes, sir, I think that's about what they classify it, as sand.

Q. You followed the trucks then?

A. Yes.

Q. And Mr. Evans was driving?

A. Yes.

Q. Was there any conversation in the car about what this was all about, what you were going to do?

A. No. We just followed them to see where they was going and we followed them into Toledo, and offhand I can't recall the name of the company they came to up here.

Q. What kind of a place was it?

[fol: 80] A. It would be an asphalt place, I think, or blacktop mostly.

Q. You mean where they make it?

A. Yes.

Q. Would it have been The Schoen Asphalt Paving Company?

A. Yes.

Q. And you were following the trucks, Morton's three trucks to Toledo?

A. Yes.



Q. And you say that Mr. Evans was driving the car?

A. Yes, sir.

Q. What happened when you got there?

A. Well, we came up and,—

Q. (Interposing) Where did you stop?

A. Right out from the office there.

Q. Did you stop on the Schoen premises, if you know or remember, or did you stop down the street, or where?

A. We stopped right in front of the Schoen place. It would be close to it. I couldn't say for sure because it has been so long.

Q. Then what happened there at that time?

A. Then my brother Joe got out and he had one of the signs.

Q. What did the sign say, if you know?

A. It said that Morton and Teamsters Local 20 were on strike.

Q. Did you get out of the automobile?

A. I didn't get out. Mr. Evans talked to somebody, but I didn't hear the conversation.

Q. Then what happened, do you remember?

A. The trucks didn't get unloaded.

Q. How do you know that?

A. Well, Mr. Morton brought his drivers back and we [fol. 81] followed them almost back into Tiffin. They left the trucks there.

Q. Mr. Morton also drove to Schoen Paving Company in Toledo?

A. He was there a little while later, but I didn't see him when we pulled up. I couldn't say if he got there just before or after we got there.

Q. But you saw that the drivers left?

A. Yes.

Q. Did they leave in their trucks?

A. No.

Q. How did they leave?

A. In a car.

Q. Who was driving that car, if you recall?

A. It has been so long ago that I couldn't say for sure.

Q. Do you recall whose car it was or who was in it?

A. Well, I know Beany and Howard was there.

Q. Howard Stultz and Vernon Bean?

A. Yes.

Q. Two of the three truck drivers?

A. Yes.

Q. Was anybody else in that car? Was the third truck driver in that car?

A. Yes, I think he was in it, and Mr. Morton.

Q. Mr. Morton was in that car?

A. Yes, sir. To the best of my knowledge, those were the four in the car.

Q. What did you do while you were there at the gate of Schoen Asphalt Paving Company?

A. Well, my brother, he got out with a picket sign, but I didn't get out of the car. I stayed in the car. I opened the door once and got almost out and stood by the car a little while and then got back in the car. I didn't go away from the car.

[fol. 82] Q. What did you see your brother Joe do?

A. He got a picket sign out when he got out of the car with him; I think him and James, both.

Q. James Maroum?

A. Yes.

Q. They each got a sign?

A. Yes.

Q. What did they do with them?

A. They walked up to the gate entrance to the place and was there with the signs, just the same as walking picket.

Q. Did you see those signs?

A. Yes.

Q. What did they say, these signs?

A. That Local 20 Teamsters were on strike against Lester Morton's. To the best of my knowledge that is what they said.

Q. About how long were you there?

A. Right offhand I guess about an hour. I couldn't say for sure. It has been so long ago.

Q. You left after the three truck drivers and Mr. Morton left, is that it?

A. Right after they left, yes.

Q. When you left did you see those three trucks, before you left and after the drivers had left?

A. After they left?

Q. Yes.

A. Yes.

Q. Were those trucks then loaded or unloaded?

A. Loaded.

Q. The trucks were still loaded when you left?

A. Yes.

Q. Do you know of your own knowledge what happened to those trucks later?

[fol. 83] A. No. -I couldn't say offhand what exactly happened.

Mr. Stauffer: You may inquire.

Cross examination.

By Mr. Hafer:

Q. Mr. Coimbs, prior to the strike in August of 1956 how many union meetings did you attend in connection with the question of getting a contract from Mr. Morton?

A. Why, just that one.

Q. At which a strike vote was taken?

A. Yes. We was over there about a week and then we went back, and that is when we voted on the strike.

Q. Then there were two meetings that you attended?

A. Yes, I attended two meetings.

Q. What was the purpose of the first meeting?

A. I think that was to bring up the subject of the strike, but I didn't stay around very long that night. I didn't pay much attention to the meeting.

By Mr. Hafer:

Q. You have testified that you were personally present at Morton's premises on the first day of the strike, is that true?

A. Yes, I was.

Q. And you stayed there until about three o'clock or so in the afternoon?

A. Yes.

Q. Except for the occasions that you went some place else with Mr. Evans or another business agent, Mr. Combs, were you on the picket line every day during the strike?

A. No, not every day I wasn't.

Q. How many days during the strike were you absent from the picket line, if you can tell us that?

A. Putting them all together that I was absent?  
[fol. 84] Q. Yes.

A. We were out about fifty days and I would say I was absent about 21 or 22 days.

Q. So that you were there more than fifty per cent of the time, so far as the number of strike days are concerned, on the picket line, is that true?

A. About fifty per cent yes, I would say I was.

Q. On the first day of the strike you testified, I believe, that there may have been about 25 men in the area, is that correct?

A. That's right.

Q. We have as a part of the record in this case aerial photograph, Mr. Combs, of the general area around the premises of the Morton Trucking Company. I want you to tell us—and while looking at the photograph I want you to be a little more specific as to whether the men who were there on the first day of the strike were on both sides of the road; that is, some around the so-called root beer stand and also some across the street from Mr. Morton's premises.

A. We were parked in through here (indicating on photograph). There is a little sand over there and there is the highway, and he was over there to get something to eat and drink. There is the little ravine (indicating on photograph).

Q. So that the record is clear on it, when you say you were over by the little ravine area, Mr. Combs, you are indicating an area between the road and Mr. Morton's premises, an area located to the right of the driveway appearing on the right side of the photograph, is that correct?

A. Yes. This is where we was parked, right through here (indicating on photograph).

Q. Will you also show that to the Judge?

A. We was parked in there, and a lot of times we would [fol. 85] come out through here. We would come in the other way and drive through here and park (indicating on photograph).

Q. On the first day of the strike you have told us where your cars were parked. Was it customary throughout the strike to park your cars in that general vicinity which you used on the first day of the strike?

A. Lots of the time we did.

Q. In addition to that, Mr. Combs, some of the cars were parked across the street from Mr. Morton's premises in the parking area around the root beer stand?

A. Sometimes some of them would park over there, but we wasn't allowed to park over there permanently.

Q. On the first day of the strike were any of the cars parked in the driveway areas leading in and out of Mr. Morton's premises?

A. Not in the driveways, no.

Q. At any time did you observe any of the cars parked across the driveways entering into Mr. Morton's premises; that is, a car permanently left there in the driveway?

A. No.

Q. Were the men who appeared at the scene of the picket line on the first day of the strike milling around in the area of their cars, standing around in groups and talking among themselves and things like that?

A. Yes.

Q. Were they standing in groups in the driveway areas?

A. No, not in the driveways.

Q. As a matter of fact, at no time during that first day of the strike were the driveways physically blocked, either by the men themselves or by their automobiles, were they?

A. No, they wasn't blocked.

Q. You said that on the first day of the strike a few [fol. 86] trucks came out of Morton's premises during the time you were picketing. At any time did you observe the driveways being physically blocked by cars or men?

A. No.

Q. Before the court order was given to you or called to your attention, Mr. Combs, how many men were actually in



possession of picket signs and walking with those signs in their possession, do you recall that?

A. Well, all of us didn't walk at the same time with them, but there would be about four or five men, I would say, with paper signs and we had some drove in by the drive-ways.

Q. You mean propped against the entrance and stuck in front of the cars, don't you?

A. Yes, and drove in the ground.

Q. And stuck in the ground?

A. Yes, across from where we was parked and in front of the gas pumps there.

Q. And the men actually carrying signs walked in the area beside the driveways; did they not?

A. I could probably show you a little better than I could explain it. We was walking through here and we had a sign stuck in here (indicating on photograph).

Q. You are indicating a telephone pole, are you not?

A. Opposite the gas pump there, and we had signs here. We had one drove up there, and down here we walked with picket signs (indicating on photograph).

Q. You mean in the area you previously identified where cars were parked?

A. Yes.

Q. With reference to the telephone pole, Mr. Combs, do you mean the telephone pole adjacent to roughly the middle of the main building shown in this photograph?

A. That's right.

[fol. 87] Q. At any time did the pickets there conduct themselves in such manner as to physically prevent any vehicles or persons from entering or leaving the premises?

A. No.

Q. After the court order was there a reduction in the number of men actually carrying signs in the area?

A. Yes, there was a reduction.

Q. How much of a reduction, Mr. Combs?

A. There was supposed to be four of us at a time there on picket that was allowed.



Q. The only difference before and after the court order was the reduction of one or two in the number of people carrying signs, is that correct?

A. Could you repeat that?

Q. The only difference then in the manner of picketing before and after the state court order was the fact that after you got the court order you reduced the number of pickets from six to four, is that correct?

A. Before we got the order there was a lot of men there all the time. After we got the order then several of us, only four of us, was supposed to be on picket at a time.

Q. Well, the other men before the court order was issued were congregated, you said, around the parked cars?

A. Yes.

Q. Now, after the court order was issued did those groupings of men around the parked cars cease?

A. Yes. The only time there would be over that was about once a week there would be a bunch over there.

Q. After the order was issued did the drivers who were not actually on picket duty stay away from the area altogether?

[fol. 88] A. I wouldn't say altogether, because I come back there lots of times when I wouldn't be on duty and I would stop and talk with them for a while.

Q. You have testified on direct examination concerning some activities at the France Stone Company. You told us that you went to that stone company with Mr. Evans and your brother Joe; do you recall that?

A. Yes, sir.

Q. And you testified that you personally and your brother Joe as well were engaged in carrying signs at the France Stone Company premises, is that right?

A. That's right.

Q. Now, were trucks going in and out of the France Stone Company premises on the day that you were there?

A. There was a lot of trucks went in and out of there.

Q. Whose trucks did you see there?

A. Some of Mr. Morton's trucks was there.

Q. How long after the strike began was it that you went out to France Stone Company, over a week?

A. It might have been about a week. I couldn't say for sure. It has been so long ago.

Q. In any event, at about the time you were there at the France Stone Company's premises Mr. Morton had some of his drivers driving company equipment?

A. Yes, there was some drivers still working.

Q. Did any of those drivers turn away, refuse to go into the premises of France Stone Company when you were there with your picket sign?

A. That day?

Q. Yes.

A. No.

Q. Were there any that refused to come out, that is, left their trucks and equipment at the France Quarry when you were picketing there, Mr. Combs?

[fol. 89] A. Not at the entrance I was at.

Q. Were there any companies that you recall whose trucks entered or left the premises on the day that you were at the France Stone Company premises with the picket signs?

A. There was a truck stopped there that day. The tractor-trailer was stopped. Mr. Evans asked him for his union card, and that is the only one I recall stopped there.

Q. Which company was that truck from?

A. I don't recall. He was coming out of the quarry then.

Q. Across the picket line?

A. Yes.

Q. And he went on about his business?

A. Yes.

Q. To your knowledge, Mr. Combs, did any truck of any company refuse to enter the France Stone premises on the day that you were picketing?

A. Not at the entrance where I was at.

Q. And there was another entrance, was there not?

A. Yes.

Q. Were the employees working at the stone quarry already on the job on the day you were at the France Stone Company picketing?

A. Yes, there was.

Q. Approximately how far were you located from the area in which the quarry employees were performing their work?

A. I would guess about as close to—just guessing—

Q. (Interposing) One mile would you say?

A. That's just a rough guess. I'd say it wasn't hardly a mile, but I couldn't hardly say.

Q. Could you from the position you were in observe the men, actually see the men at the quarry doing their work? [fol. 90] A. No.

Q. Were there any hills or buildings which obstructed any possible observation on your part of the actual quarry operation, Mr. Combs?

A. From where I was parked there was a little rise in grade up into the quarry. I couldn't see the men at work, no.

Q. Because of a rise in the general terrain of the area?

A. Yes, and because of the way the gravel is stacked in the quarry, sir.

Q. Was there a stockpile of gravel between you and the men in the quarry?

A. Not straight from the road there wasn't.

Q. In any event, you couldn't see the men working in the quarry itself, is that right?

A. No, sir, I couldn't.

Q. Did you ever see any of the men at the quarry performing their work on the day you were picketing?

A. Yes, at the scale house where they weigh the gravel.

Q. When you were at the scale house that morning who were you with?

A. Mr. Evans.

Q. Did you get out of the car?

A. No.

Q. Did you talk to any of the employees of the quarry?

A. No.

Q. At any time during that day did you talk to any of the employees of the quarry?

A. No, I didn't.

Q. To your knowledge did any of the workers at the quarry quit work while you were picketing?

A. To my knowledge, no.

Q. Did you return to the quarry the second day, Mr. Combs, or on a second day?

[fol. 91] A. No; just one day is all I stayed there.

Q. You also testified on direct examination with respect to a trip to Fremont and a conversation between Mr. Evans and a boss on a blacktopping job. Do you know the name of the man Mr. Evans talked to there?

A. No, I don't.

Q. How far was the car parked from the supervisor's shack on the job site that day?

A. Around 75-foot.

Q. Did you walk over to the shack with Mr. Evans?

A. No. I didn't get out of the car.

Q. Where did Mr. Evans have his conversation with the man you referred to as the boss?

A. Between the car and the shack where he had stayed.

Q. So that they were outside the shack when this conversation occurred?

A. Yes.

Q. You overheard only two statements, is that correct, of this conversation?

A. Yes.

Q. One was a statement by Mr. Evans that he would like to have his cooperation in keeping the Morton trucks off the job?

A. Yes.

Q. And the reply of the man saying, "I would love to help you," or words to that effect, is that correct?

A. Yes.

Q. How long a period of time was Mr. Evans and the man we are calling the "boss" engaged in this conversation?

A. I would say a minute or two. It was just a short conversation.

Q. Did any of the men who were with you on the day that you went to Fremont talk about the blacktop job, or did any of the men get out of the car and carry signs at the premises of this job?

[fol. 92] A. No, not there they didn't.

Q. To your knowledge, Mr. Combs, did any one of the people in the car with Mr. Evans have any conversations

with anybody on that job except for Mr. Evans' conversation with the boss?

A. No.

Q. You testified towards the end of your direct examination about going to Maple Grove and to the rock quarry there; do you remember that?

A. Yes.

Q. About how long after the strike started did this event occur?

A. It has been so long I couldn't say for sure.

Q. In any event, at the time you went there Mr. Morton had truckdrivers who were crossing the picket lines at his premises and were still working for him?

A. Yes.

Q. And you followed three trucks to the Maple Grove Rock Quarry, is that correct?

A. That's right.

Q. At the quarry did you or any of the other people accompanying you get out of this car?

A. Mr. Evans got out.

Q. At the quarry?

A. Yes, at the scale house.

Q. Do you know who he talked to there?

A. No, sir, I don't.

Q. He went into the scale house?

A. Yes.

Q. In addition to Mr. Evans there was yourself and your brother Joe and a man by the name of James Marcum?

A. Yes.

Q. Did either your brother Joe Combs or Mr. Marcum get out of the car at the quarry?

[fol. 93] A. No.

Q. Did you overhear any part of Mr. Evans' conversation, if he had one there?

A. No, I didn't.

Q. Did you personally see who Mr. Evans was talking to, if there was anyone?

A. Not personally I didn't, no.

Q. After the trucks were loaded at the quarry they then proceeded to the premises of Schoen Asphalt Paving Company in Toledo?



A. Yes.

Q. That is here in Toledo, you said?

A. Yes.

Q. Did the trucks arrive at Schoen's premises before you and the other people in your car arrived there?

A. Yes.

Q. The trucks were already inside the premises of Schoen when you pulled up in front of Schoen's?

A. It has been so long I couldn't say exactly; just before they did or after they pulled in, but I do know when we got there my brother Joe and Marcum got out with strike signs, and I heard some man say,—

Q. (Interposing) In any event, you arrived almost at exactly the same time the trucks arrived at Schoen's place of business, or a minute or two before or after, is that right?

A. To my recollection, I couldn't say for sure. I wouldn't want to say for sure, but I do know the trucks did get there and Mr. Evans,—

Q. (Interposing) Just a minute.

Mr. Stauffer: Let him finish.

Mr. Hafer: I will be the judge of that. The answer is not responsive to the question, and this is cross-examination, of course.

By Mr. Hafer:

Q. What I want to do is take it in a very simple step [fol. 94] by step way, Mr. Combs. Try as best you can to answer the question, only the question I am asking you.

At the time you pulled up at Schoen's place of business where was the car parked in relationship to the driveway entrance to Schoen's premises?

A. Over to the left-hand side by the curb. It was the left-hand side of the entrance. To my knowledge, that is where we was parked.

Q. Was the car blocking the entrance to Schoen's?

A. No.

Q. As soon as the car was parked I believe you testified that your brother Joe at least got out of the car, and



perhaps Mr. Marcum, too, and started to walk with the picket signs, is that right?

A. Yes.

Q. At the time they started to walk with the picket signs did Mr. Evans then at this point proceed to walk into the office of Schoen?

A. Yes, he went in there.

Q. He started to walk in there at about the same time your brother Joe and Mr. Marcum started to picket, is that true?

A. I would say it was about the same time.

Q. While Mr. Evans was inside the office your brother Joe and Marcum continued to picket?

A. Yes; they was out front.

Q. During the time the picketing was going on the trucks of Mr. Morton were inside there, on the premises of Schoen Asphalt Paving Company, were they not?

A. Yes.

Q. You could see them from where you were, could you not?

A. No, I didn't pay much attention to that. I was sitting in the car.

[fol. 95] Q. About how far was the entrance to the premises of Schoen to the office that Mr. Evans entered?

A. From where the car was parked?

Q. Yes.

A. Offhand, sir, I couldn't say for sure.

Q. A hundred feet or more?

A. Something like that.

Q. Did any trucks enter onto the premises of Schoen Asphalt Paving Company during the time that you were present on this day we are talking about?

A. I didn't pay much attention to that. I would say a truck or two entered, but I didn't pay much attention. I couldn't say for sure.

Q. To your knowledge, did any truck respect the picket line and not go into the Schoen premises while this picketing was going on there?

A. Not while I was sitting there.

Q. As soon as you left with Mr. Evans, Joe and Marcum left, too, did they not?

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A. That's right.

Q. Did you observe any of the employees of Schoen Asphalt quitting work while the picketing was going on?

A. No.

Q. After about an hour you testified Mr. Evans came out of the Schoen office and got into the car, is that right?

A. That's right.

Q. And thereafter he told Joe, your brother, and Mr. Marcum to come with him and the picketing was ended at that point, is that right?

A. Yes, and that the trucks would not be dumped.

Q. And the trucks were still on the premises of Schoen and had not been unloaded at that point?

A. That's right.

Q. You have testified here today, I believe, with respect to two places at which men with signs were walking other [fol. 96] than the premises of Morton. You testified that one of them was the France Quarry. You testified, too, with respect to Schoen. You have told us all about those.

My question to you now is whether you personally observed any picketing at any company other than Morton's except for the two you have told us about?

A. Except for the two I was on?

Q. Yes.

A. No, not personally.

Redirect examination.

By Mr. Stauffer:

Q. Mr. Combs, you have testified that prior to the issuance of the Court order you observed picketing by 25 or more men?

A. Yes.

Q. At Morton's premises?

A. Yes.

Q. How much was that reduced after the court order?

A. After the court order how many was on?

Q. How many fewer were on after that court order than there were before, yes.

A. There was supposed to be just the four of us.

By Mr. Stauffer:

Q. To proceed; Mr. Combs, you testified for the first time on cross-examination that when you were standing at The France Stone Quarry gate or entrance you observed Mr. Evans stop a truck that was coming out of the quarry, and you testified that Mr. Evans talked to that truckdriver?

A. Yes.

Q. Do you know who that truckdriver was?

[fol. 97] A. No, I don't.

Q. Did you hear what Mr. Evans said to that truckdriver?

A. Mr. Evans told him he was a union official and Mr. Morton's drivers was on strike, and he asked him to show Mr. Evans his card, what union he belonged to, if he belonged to the union, and the man showed it to him and Mr. Evans let him go on.

Q. Did you and Mr. Evans discuss that incident then?

A. No, we didn't. I didn't pay any attention to it.

Q. When you were testifying on cross-examination in answer to a question put to you by Mr. Hafer you started to say something about the things you did at the Schoen Asphalt Paving Company premises, and you said you knew something because you saw Mr. Evans do something or go somewhere.

Can you tell us about that now?

A. When we stopped at Schoen's?

Q. Yes.

A. Well, Mr. Evans,—about the only thing that was said, to my recollection, was he said, "If we need any help we can get it." I don't know what he meant by it.

Q. Who was she talking to?

A. He was talking to the three of us.

The Court: To whom?

A. My brother Joe, myself and James Marcum.

Q. But you don't know what he meant by that?

A. No, sir, I don't.

Mr. Stauffer: That's all, your Honor.

Recross examination.

By Mr. Hafer:

Q. Mr. Combs, where did the conversation with Mr. Evans when he said "We can get some help if we need it"?

[fol. 98] A. At the car.

Q. At the car?

A. Yes.

Q. Was that before or after Mr. Evans went into the office of Schoen Asphalt?

A. Before.

Q. Was anyone present at the time of this particular conversation other than yourself, your brother and James Marcum, and of course Mr. Evans?

A. No.

Q. Was your brother Joe and Mr. Marcum, were they truck drivers for Mr. Morton at this time?

A. Yes.

Q. And they were participating in the strike?

A. Yes.

Q. Are you sure, Mr. Combs, that when you went to Schoen Asphalt Paving that it was Mr. Evans who was with you? Couldn't it have been Mr. Reagan, another representative of the union?

A. No.

Q. You are confident that it was Mr. Evans?

A. I am almost positive.

Thereupon, the Plaintiff called as a witness, Mr. HUBERT OLDS, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. State your name, please.

A. Hubert Olds, O-I-d-s.

Q. Where do you live?

A. Bloomville, Ohio.

[fol. 99] Q. How long have you lived there?

A. I have lived there for thirty years.

Q. Where do you work, Mr. Olds?

A. For The France Company at Bloomville.

Q. How long have you worked there?

A. Over thirty years.

Q. What do you do there?

A. Well, I am listed on the payroll as a mechanic.

Q. What did you do there in 1956?

A. Mechanical work.

Q. Where do you work, on the grounds? Do you work in a garage or where?

A. I work around any place they need me; in the plant in the pit or in the building there.

Q. As a mechanic what kind of machinery do you work on?

A. Stone-crushing machinery and trucks.

Q. And the machinery that loads the trucks that come into the quarry, is that true?

A. Sometimes, and sometimes I run a locomotive that hauls the stone.

Q. Do you belong to any union?

A. I do.

Q. Did you belong to a union throughout 1956?

A. I did.

Q. What union did you belong to in 1956?

A. The International Union of Operating Engineers.

Q. Do you still belong to that union?

A. Yes.

Q. Are you anything other than a member of that union?  
Are you an officer, of that union?

A. I am a committee member or steward.

Q. Were you such in 1956?

A. Yes, I was.

Q. And in the summer of 1956, in particular?  
[fol. 100] A. I was.

Q. What are your duties as a committeeman or steward,  
Mr. Olds?

A. To receive the grievances of the men, if they have  
any, and to carry them to the superiors.

Q. How long have you been a committeeman or steward?

A. Over twenty years.

Q. Are there any other committeemen or stewards at  
The France Stone Company, Bloomville Plant?

A. Yes, there are.

Q. How many others are there?

A. One other man.

Q. That was the situation, was it, in the summer of 1956?

A. I can't answer that. I don't know that because some-  
times they do not have two or three; we may have had one.

Q. In the summer of 1956, at any rate, you were a union  
steward there at that time?

A. Yes; there could have been at that time, yes.

Q. All right. Approximately how many employees of  
The France Stone Company were members of your union  
in the summer of 1956?

A. There were possibly between 20 and 25.

Q. What kind of business does The France Stone Com-  
pany have there, Mr. Olds?

A. Building stone and stone for road construction.

Q. It is a stone pit and gravel pit?

A. A stone pit, a limestone pit.

Q. Have you ever heard of The Lester Morton Trucking  
Company of Tiffin, Ohio?

A. I have.

Q. Did Morton's trucks ever come into The France Stone  
Company's pit prior to the summer of 1956?

A. They have.



[fol. 101] Q. For how many years, if you know?

A. Over thirty years.

Q. Did you learn of any labor difficulty that Mr. Morton was having in the summer of 1956?

A. I did.

Q. How did you learn of that?

A. Through a representative of a union.

Q. Through a representative of what union, if you know?

A. The Teamsters.

Q. Do you know what Teamsters Local or what area it was?

A. I couldn't tell you. They told me at the time, but now I don't remember.

Q. Was this a conversation between you and some other person?

A. It was.

Q. Where did that take place?

A. Down at the stone quarry, at the plant.

Q. You were working at the time?

A. I was.

Q. And this was on the France Stone Company property?

A. It was.

Q. Was it inside a building or outside?

A. It was outside.

Q. Who was present besides yourself and this other person you spoke to, if you know?

A. I believe that the superintendent was there, my boss. I don't remember for certain.

Q. Whether or not he was there, Mr. Olds, what is his name?

A. C. C. Robison.

Q. Do you recall about what time of the day that conversation took place?

[fol. 102] A. It was in the forenoon, but I won't say for certain the exact time.

Q. Had you known about the difficulty Morton was having prior to that conversation?

A. I was informed by the superintendent that there would be a man there to talk to me.

Q. You were so informed that same day?

A. Yes.

Q. Had you known about the strike before that day?

A. I had not.

Q. What was the substance of your conversation with this man that came to talk to you?

Mr. Hafer: We object to any testimony with respect to the substance of that conversation. The International Teamsters Union has over 900 locals; it has four or five geographical divisions, and multiple state divisions. There is nothing in the record to show what Teamsters Local or Council or Division the man who represented himself to be a Teamster official represented. Until there has been some identification, your Honor, we cannot be bound by any testimony relating to conversations he may have had.

The Court: There ought to be some further identification of the man he talked to.

By Mr. Stauffer:

Q. Is not the man you spoke to sitting in the courtroom, Mr. Olds?

A. I cannot say. I do not remember the man. It was in 1956 and I don't remember.

By Mr. Stauffer:

Q. How did this man that came to you identify himself? Who did he say he was?

A. The way I understood him is that he was representing the Teamster Union.

[fol. 103] Q. Did he say what Teamster Union or anything of that nature?

A. I do not know the man.

By Mr. Stauffer:

Q. Did he say what he was doing there?

A. He told me he was there to,—saying not to load Mr. Morton's trucks.

The Court: \* \* \* Just state what was said, what did he say, and how did he introduce himself?

A. I understood—now I remember, but it has been long ago,—I understood him to say that he was from the Teamsters. He may have said the number. I don't know; I don't remember, and that they wanted us to quit loading Mr. Morton's trucks. Now, that was the substance of his conversation to me.

The Court: You don't know anything more about the identity of the man?

A. I do not know his name and I can't remember that.

The Court: The answer may be stricken.

Q. Mr. Olds, how many entrances are there to The France Stone Company's quarry?

A. Two.

Q. Are they off different roads or off the same road?

A. No, they are off different roads.

Q. Do you use the same entrance each day or might you use different ones?

A. Personally?

Q. Yes.

A. I use the same one.

Q. Please identify the one you use. How would you identify it?

[fol. 104] A. Going into the plant from the south.

Q. What road is that off of?

A. The New Haven Road. It is a county road.

Q. Now, on the day you have been testifying about, Mr. Olds, did you see anything unusual at the entrance to the stone quarry?

A. Not when I went to work.

Q. Did you see anything when you left?

A. No.

Q. Or on the day preceding or the day following?

A. No.

Q. Did you discuss this difficulty of Morton's with any one else?

A. No.

Cross examination.

By Mr. Hafer:

Q. Do you recall missing any time from work during August of 1956 from the France Stone Company quarry?

A. Sir?

Q. Did you miss any time from work during August of 1956?

A. No, I didn't.

Q. As far as you can remember you were working every day you were supposed to be working?

A. Yes, sir.

Q. At any time during the month of August, 1956, was there any strike or stoppage of work by the employees of France Stone that you observed?

A. No.

Q. As far as you know, Mr. Olds, there weren't any strikes or work stoppages at France Stone Company in August, 1956?

A. No.

Q. The answer is that there were none, is that true?  
[fol. 105] A. There was none that I know of, if I interpret your question right.

Q. You know what a strike is, everybody quits work and they do not work?

A. We didn't do that.

Q. Were there any slowdowns during the month of August, 1956?

A. It was asked for, a slowdown.

Mr. Hafer: We move that the answer be stricken.

It is not responsive.

The Court: What is the purpose of this cross-examination?

Mr. Hafer: I want to show that they continued to work as usual during this period of time.

By Mr. Hafer:

Q. At any time during the time you were working there in August and September of 1956, Mr. Olds, did you personally refuse to enter through either of the two entrances to The France Stone Company premises?

A. I don't understand the question.

Q. Did you go to work every day that you were supposed to?

A. I did.

Thereupon, the Plaintiff called as a witness, Mr. BERNARD BEAN, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. State your name, please.

A. Bernard Bean.

[fol. 106] Q. What is your address, Mr. Bean?

A. Route 4, Box #29, Tiffin, Ohio.

Q. For whom do you presently work?

A. Lester Morton Trucking Company.

Q. Did you work for Morton in 1956?

A. Yes, sir.

Q. What was your job in 1956?

A. I was truckdriver, driving trucks for him.

Q. Did you participate in the strike in August, 1956?

A. No, sir.

Q. When did that strike take place in 1956, what month in 1956? When did it start, Mr. Bean?

A. That I couldn't offhand say, honest I couldn't.

Q. Was it in the summer?

A. In the summer or in the spring of the year.

Q. What was your last answer?

A. In the spring of the year or just at the beginning of summer.

Q. Do you recall the first day of the strike?

A. Yes.

Q. Did you work the first day of the strike?

A. Yes, sir.

Q. Did you drive a truck the first day of the strike?

A. No, sir.

Q. What did you do?

A. I worked in the garage.

Q. Did you drive a truck at all during the strike?

A. Yes, sir.

Q. About how many days after the first day of the strike did you first start to drive a truck?

A. Well, it was quite a few days after the strike started; I couldn't just say.

Q. About a week or so?

A. Yes. There was at least a week or more; I am sure it was.

[fol. 107] Q. Do you recall what you did when you drove a truck for Lester Morton during the strike?

A. Yes, sir, I do.

Q. What did you do?

A. I took a truck and took a load of sand to Schoen Asphalt Paving Company. I drove to Dolomite, Inc., and then I went to Toledo.

Q. Did anyone else work the same day you worked for Morton?

A. When I loaded the truck?

Q. Yes.

A. Howard Stulz and Clifford Smith.

Q. Did the three of you work in a group?

A. Yes. We took three trucks that day, three doubles and,—

Q. (Interposing) A "double" is what?

A. A tractor-dump truck with a tandem hook on the back of it.

Q. And a tandem is a dump trailer?

A. That's right.



Q. Where did you go that day?

A. We went to Dolomite, Inc.

Q. The three of you in three trucks?

A. That's right.

Q. Where is that company located?

A. It is north of Tiffin about eight miles.

Q. What is Dolomite, Inc.?

A. It is a big Maple Grove dolomite quarry.

Q. What did you do there?

A. We loaded sand.

Q. Then what did you do?

A. We weighed out and we went to Toledo to The Schoen Asphalt Paving Company.

Q. Were you followed on the way here?

A. Yes, sir.

[fol. 108] Q. Do you know by whom?

A. Yes, sir.

Q. How do you know who it was?

A. I know the man that followed me is Mr. Larry Evans.

Q. Did you see him?

A. Yes, sir.

Q. Was he in an automobile or what?

A. Yes, sir; he was driving.

Q. Was he alone or with anyone?

A. No, sir.

Q. He was not alone?

A. No, sir.

Q. Who was with him?

A. I think it was either one or the two Combs boys with him, but anyway there was two different cars.

Q. What are the first names of the Combs boys?

A. One was Joe and the other one was John.

Q. When did you first see Mr. Evans and the others?

A. At the Dolomite, Inc., Bettsville Quarry.

Q. When did you see them again?

A. When we pulled out across the railroad track headed for Toledo here.

Q. The railroad tracks at the quarry?

A. At the entrance.

Q. Did you see them that day again?

A. Yes, sir. Many times they went around us, parked

in driveways and waited until we passed and then they would follow us and then go around us again.

Q. Was this on your way to Toledo?

A. Yes.

Q. And just on that one trip?

A. That's right.

Q. When you arrived here in Toledo what did you observe?

[fol. 109] A. At Schoen's?

Q. Yes.

A. Well, they pulled in a few seconds back of us.

Q. Who is "they"?

A. Mr. Evans and the other people with him. They pulled in in back of us and they never drove the cars in the yard. We drove in the trucks there.

Q. Did you observe them stop near the Schoen property?

A. They stopped on the outside of the property.

Q. They parked there?

A. Yes, sir.

Q. Did you observe who was in the second car?

A. No, I couldn't.

Q. Three of you men in trucks arrived at about the same time, is that right?

A. All three of us was in a convoy, yes.

Q. What did you do when you got there?

A. We pulled in the gate.

Q. What did you do next?

A. We went to see about unloading, and Mr. Evans went in the office and one of Schoen's men came out, and then I think it was the superintendent came out and told us that we couldn't unload.

Q. Did you personally go into the office?

A. I didn't myself, no, sir.

Q. What did you do then?

A. We sit there in the trucks. Mr. Morton told us we couldn't unload.

Q. When did he tell you that?

A. He was right with us, or back of us.

Q. Was he with you at the quarry at Maple Grove?

A. Yes, he was.

Q. So that you were in a convoy consisting of three trucks and Mr. Morton?

A. Yes, sir. He was driving his own car.

Q. Did he arrive at Schoen's before you did?  
[fol. 110] A. Right behind us.

Q. Did you have any discussions at Schoen's property with anyone other than Mr. Morton?

A. No, just when he come out of the office and told us we couldn't unload.

Q. Did you unload your truck then?

A. No.

Q. Did any one of the three trucks unload that day at Schoen Asphalt Paving Company?

A. No, sir.

Q. How long did you stay at the Schoen premises?

A. I don't know exactly. I would say not over a half-hour at the most.

Q. Did you leave in your trucks?

A. No, sir.

Q. How did you leave?

A. We left with Mr. Lester Morton in his car.

Q. You left with Mr. Morton in his car?

A. Yes, sir.

Q. Had your trucks been unloaded yet?

A. No, sir.

Q. Where did you park your trucks with respect to the gate that you came in?

A. Well, I would say it was right south of the gate and back of the office.

Q. Inside the Schoen property?

A. Yes; inside the gate, inside Schoen's property.

Q. Did you observe the gate while you were there at the Schoen property?

A. Yes, sir.

Q. Could you see it from your truck, or did you get out of your truck?

A. We got out of the trucks after we parked them and walked back to the gate and got in the car with Mr. Morton.

[fol. 111] Q. What did you observe at the gate while you were there?

A. Well, I saw picket signs up on the outside. I don't

recall if they was carried by anybody or whether they was sitting up against the fence there.

Q. How many signs did you see there, do you remember?

A. I would say there was two; one on the right and one on the left.

Q. Do you recall what those signs said?

A. "Lester Morton on Strike."

Q. Do you recall whether the signs had the name of any union on them?

By Mr. Stauffer:

Q. Do you recall whether those strike signs had the name of any union inscribed on them?

A. Yes, Local 20.

Q. Were those signs there at the Schoen Asphalt Paving Company premises when you left?

A. Yes, sir, they was.

Q. Do you recognize any of the persons carrying those signs?

A. I don't recall if they was carrying them. I saw them up against the fence there. All I recall seeing is the man I knew in the Oldsmobile.

Q. Who was that?

A. Mr. Larry Evans was one of them, and there was Mr. John Combs or Joe Combs. I don't recall which one it was.

Q. During the strike did you work on the construction of the Route 20 bypass at Fremont?

A. I did for one morning for about an hour and a half or two hours, yes.

Q. How many days after the Morton Strike began was that, Mr. Bean, do you remember?

A. That I really couldn't say, just how long after it was: [fol. 112] Q. Do you know whether or not a court order was issued during the course of this strike?

A. It was.

Q. Do you know whether or not you worked at the Fremont bypass job after that court order was issued?

A. Never.

Q. So that you worked at the Fremont bypass job before the court order was issued?

A. I was working there before the court order, yes, sir, and before the strike was ever there.

Q. Did you work at the Fremont bypass job at all during the course of the strike?

A. Just about an hour and a half or two hours one morning.

Q. I want to ask you about that particular day. Was that day before or after the court order?

A. After the court order.

Q. It was after the court order?

A. After the court order.

Q. Did anyone else who was also an employee of Morton work at all that same day?

A. Yes, sir.

Q. Who was that?

A. There was my brother, Hilliard Bean.

Q. Was there anyone else from Morton's working that day?

A. I can't recall the names because it was so long ago.

Q. How did you happen to go over there that day?

A. They called us.

Q. Who called you?

A. Launder & Son Construction Company.

By Mr. Stauffer:

Q. Mr. Bean, did anyone instruct you to go over there?  
[fol. 113] A. Yes.

Q. Who was that?

A. Lester Morton.

Q. Did you drive a truck?

A. I didn't myself, no.

Q. You did not?

A. No, sir.

Q. What did you expect to do there that day?

A. I went over to batch.

Q. Do you do that with a truck?

A. No, sir. I am foreman in charge of trucks. I drove a pickup truck over.

Q. Did any of Mr. Morton's trucks go over there that day?

A. Yes. As I usually do on the job, I led the trucks to the job out there.

Q. With a pickup truck?

A. Yes.

Q. And several dump trucks followed you?

A. That's right.

Q. What did you do during those one or two hours that you worked out there?

A. We started to load up with cement and aggregate and started to haul.

Q. What did you load?

A. Aggregate and cement.

Q. What is aggregate?

A. Stone, gravel and cement, that is, the cement is added to it.

Q. What is aggregate used for?

A. In the paving of a cement highway.

Q. Where did you get the aggregate?

A. Right out of the batch bins at the construction site. That is the way they set up their bins for their work.

Q. You hauled that material to the paver laying the cement highway, is that true?

[fol. 114] A. That's right, and they done the mixing themselves.

Q. You hauled the dry material to the cement mixer?

A. That's right.

Q. What is a batch?

A. Well, a batch is a yard of cement.

Q. The dry ingredients?

A. Yes. The cement is in one compartment and the stone aggregate is in the other compartment and they come out together. The paver mixes it up together and he puts it on the highway.

Q. Are these compartments on the trucks?

A. The compartments is on the trucks, that's right.

Q. How far was the source of supply of batch material



from the place where the paver was laying concrete that day?

A. The distance we had to haul?

Q. Yes.

A. It was a distance, I would say, not over four-tenths—three- or four-tenths of a mile.

Q. How long did your two or three drivers work that day?

A. They made one or two trips at the most; about two trips, I would say, at the most.

Q. How much time did that take?

A. I would imagine about an hour and a half for the two trips.

Q. About what time did you start that day?

A. About nine o'clock in the morning.

Q. Did you stop before noon that day?

A. Yes, sir.

Q. Why did you stop working that day?

A. Mr.—there was this—I don't know who it was; I would think it was the project engineer, he told us we had to take our trucks off the job.

Mr. Hafer: Objection, your Honor, to that conversation. [fol. 115] The Court: Objection overruled.

Mr. Hafer: There is no showing in the record as to the identity of the person who came out there, who he represented or what his name was.

The Court: He said he was the project engineer. Was it the project engineer who told you that or someone else?

A. The project engineer from Lauder & Son. He said we had to take our trucks off the job because of the union.

Mr. Hafer: I object to these hearsay statements.

They certainly can't be binding on us.

The Court: I assume it will be connected up. Standing alone it would mean nothing.

Mr. Stauffer: If the Court please, it will be connected up.

The Court: Very well.

By Mr. Stauffer:

Q. Mr. Bean, while you were there at the Fremont bypass job, did you observe anyone come to the construction site there that had any connection with Morton?

A. With Lester Morton?

Q. Yes.

A. With his business?

Q. Yes.

A. No, sir, only myself.

Q. Did you observe anyone come out there who had any connection with Teamsters Local 20?

A. Yes, sir.

Q. Who was that?

A. Larry Evans.

Q. How did he come out there, in a car?

A. He came in a car.

Q. Was anyone with him?

A. That I can't say. I saw him come out of the office and get in his car.

The Court: Was this before or after?

[fol. 116] A. After. Mr. Larry Evans come out of the office and the project engineer told me I had to take my trucks off the job. That is when I saw Mr. Larry Evans.

Mr. Stauffer: You may inquire.

Mr. Hafer: I would like to renew our motion to strike this testimony. It was not at any time connected up, the statement of this witness.

The Court: The evidence is circumstantial. He testified that he saw Mr. Evans come out of the office and the project engineer then told him to take his truck off the job.

Mr. Hafer: That does not concern the testimony of the project engineer as to what Mr. Evans told him, told the project engineer, and we move that it be stricken.

The Court: The testimony will stand.

Cross examination.

By Mr. Hafer:

Q. Mr. Bean, where were you at the time Mr. Evans was in the shack with the construction engineer?

A. I was in my pickup truck right outside the office while my trucks was running.

Q. Did you overhear the conversation between Mr. Evans and the construction engineer or project engineer?

A. No.

Q. So that you have no personal knowledge then as to what Mr. Evans said, if anything, to the project engineer?

A. No, sir.

Q. You testified, I believe, that you worked on the first day of the strike around the yard of the company?

A. That's right.

Q. And you testified that perhaps a week after the strike started you made your first driving trip?

A. That's right; maybe it was more or less.

[fol. 117] Q. I understand that. During the period of time from the first day of the strike until you made your first driving trip did you continue to work around the yard or garage?

A. I worked in the garage as a mechanic.

Q. Did any of the other drivers or employees of Morton work in the same area with you during the strike?

A. Yes.

Q. How many?

A. Well, there was Mr. Howard Stultz.

Q. Each of those days you and Mr. Stultz worked together was before your first driving trip?

A. Yes.

Q. After the first driving trip did you do any more truck driving, say, a week after the strike until the strike was ended?

A. I don't recall that, but after he got his court order I went on another job.

Q. For Mr. Morton?

A. Yes.

Q. And that was what kind of work?

A. I was a foreman and driving a truck.

Thereupon, Plaintiff called as a witness, Mr. CHARLES ROBISON, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Py:

Q. State your name for the record, please.

A. Charles Robison.

Q. What is your business or occupation?

A. I am Plant Manager for The France Stone Company.

Q. Where is that located?

[fol. 118] A. At the stone quarry at Bellevue and Bloomville, Ohio.

Q. Calling your attention to 1956, Mr. Robison, do you recall when there was a strike at The Morton Trucking Company?

A. I do.

Q. How did you first gain information relative to that strike?

A. Well, I drove in the plant and I saw some men there at the end of the drive.

Q. By that you mean your plant at The France Stone Company?

A. Yes, sir.

Q. Were there some men there with signs?

A. Yes, sir.

Q. Subsequent to that did you see an official of the union? Did an official of the union call upon you?

A. Well, it was after I had drove in that a fellow drove into the place in a car.

Q. And was he alone?

A. Yes, sir.

Q. He came in and introduced himself to you, did he?

A. Yes, sir.

Q. What name did he give you at that time?

A. I don't recall that.

Q. You don't recall the name?

A. No, I don't.

Q. Did he show you some credentials?

A. No, sir.

Q. What is it he told you at that time?

Mr. Hafer: Objection. First of all, your Honor, we have no name. We have a man in a car with no credentials and he now wants testimony as to this conversation.

The Court: You had better have him identified.

Mr. Py: I am trying to do that, your Honor.

[fol. 119] By Mr. Py:

Q. Has anyone talked to you about the testimony you were to give in this case?

A. No.

Q. What kind of a car did this man drive up in?

A. As I recall, he was driving a black Cadillac.

Q. How tall was he, if you recall?

A. I would say he was just an average sized man, as I recall. This has been some time ago.

Q. That would be about how tall? How tall are you, sir?

A. 5-9½.

Q. Was this man as tall as you are or taller?

A. Around my height or he could have been a little taller.

Q. And a man about what age?

A. I suppose possibly around 45.

By Mr. Py:

Q. What did he tell you, Mr. Robison, so far as his identity was concerned?

A. He said he represented the Teamster Union.

Q. Did he tell you what local?

A. Not to my knowledge.

By Mr. Py:

Q. What else did he say with reference to his identity?

A. Nothing to my recollection. He said he represented the Teamsters Union.

Q. What was the conversation you had?

A. As I recall, he told me he represented the Teamster Union and that they were on strike at The Lester Morton Trucking Company, and he asked me not to have our men load Lester Morton's trucks.

Mr. Py: That's all.

[fol. 120] Mr. Hafer: We move that this witness's testimony be stricken.

The Court: I will sustain the objection unless you can identify the man.

Mr. Py: He identified himself as being a representative of the union that had Lester Morton on strike, is that correct?

The Court: (Interposing) I will sustain the motion unless he is further identified.

By Mr. Py:

Q. Do you see the man who called upon you in this courtroom?

Q. Can you point out the man who called on you, Mr. Robison?

A. No, I can't.

Q. Have you seen him in the hall since you have been here in this building?

A. Not to my knowledge, no.

Q. Mr. Robison, how many days did you see the picket signs at the entrance to your quarry?

A. Just that one day.

Q. And following that, the following day did you go in the same entrance?

A. Yes, sir.



Q. So far as your recollection is concerned, Mr. Robison, they were there one day?

A. If my memory serves me, it was the one day.

Q. Did you tell Mr. Olds subsequent to your conversation with this man that he might be contacted by this man?

A. Yes.

Mr. Hafer: Objection, your Honor, and I move that the answer be stricken.

[fol. 121] The Court: It may stand.

Mr. Py: You may inquire.

Mr. Hafer: Is my understanding correct, your Honor, that the testimony with respect to the alleged conversation between this witness and the purported representative of the Teamsters Union has been stricken?

The Court: That is right.

Thereupon, the Plaintiff called as a witness, MR. LAWRENCE EVANS, who, having been previously duly sworn by the Clerk, testified as follows:

#### Cross examination.

By Mr. Py:

Q. Will you state your name for the record, please?

A. Lawrence L. Evans.

Q. How old are you, Mr. Evans?

A. Fifty-five.

Q. What is your business or occupation?

A. Business agent and trustee of Local 20, Teamsters Union, Toledo, Ohio.

Q. You are an officer of that union?

A. I am, sir.

Q. Prior to that what did you do?

A. I have been an officer of the local for 20 years. Prior to that I came out of the Army.

Q. Mr. Evans, in August, 1956, there was a strike called at Larry Morton's operation, was there not?

A. Lester Morton.

Q. Lester Morton. Excuse me. Subsequent to that did you take some men over to The France Stone Quarry and have them put up picket signs over there?  
[fol. 122] A. That I did, yes, sir.

Q. Did you go down there and talk with Mr. Robison about not loading Mr. Morton's trucks?

A. I don't remember talking to Mr. Robison.

Q. You don't deny it, do you?

A. I wouldn't say I did. Five years is a long time ago. You talk to a lot of people. I am not sure if I did or not.

Q. Well, did you talk to Mr. Olds out at The France Stone Company's quarry?

A. I don't recall talking to him.

Q. What kind of a car do you drive?

A. A Buick.

Q. What year? Or what kind of a car were you driving in 1956?

A. An Oldsmobile.

Q. Mr. Evans, you don't recall the names, but do you recall going into France's office or an office on the France property?

A. I was in on France's property four or five times.

Q. At the time of this strike?

A. Before and after, too.

Q. Do you remember going into an office on their premises and talking to someone about the Morton strike?

A. No, sir, I don't.

Q. But you were on the premises at about that time; did you talk with anyone on the premises at that time?

A. Not on the premises. There were pickets on the picket line. I was at the quarry prior to the time of the strike and prior to the time the pickets were put out.

Q. Do you recall who you spoke with?

A. No.

Q. You may have or may not have spoken to Mr. Robison, is that true?

A. I don't know the names. I talked to four or five [fol. 123] people over there over a period of three or four months. I serviced that territory.

Q. Did you solicit their aid in connection with this strike at Morton's?

A. I did.

• By Mr. Py:

Q. You did talk to somebody?

A. Not on the premises.

Q. But you said you talked to someone about giving you aid in connection with the strike, right?

A. That was a mechanic that lived up the street from the quarry.

Q. A mechanic for The France Stone Company?

A. Yes.

Q. What was his name?

A. I don't remember his name.

Q. But he was an employee of The France Stone Company?

A. Yes, sir.

Q. You asked for his help or assistance in your problem, the problem that you were having then with Lester Morton?

A. That is correct.

Q. What did you ask him?

A. I asked him for a little support over there, and I also said, "How would you people go? What reaction would you people have if we came over and talked to them in a meeting?" and he said he didn't think we would get any help.

Q. But it was worth a try to see if you could get their support?

A. Yes.

Q. And you did give it a try and didn't get anywhere?

A. Yes.

Mr. Py: With that, your Honor, I think the testimony of Mr. Olds becomes material.

[fol. 124] The Court: He does not say that he talked to Mr. Robison.

Mr. Py: He says he talked with a mechanic, your Honor.

The Court: Did you go into the office of the superintendent?

A. No, sir. I went to his house up the street, and it must have been three or four blocks away on the same street coming directly out of the quarry.

The Court: That was the mechanic's house?

A. Yes, sir.

The Court: How about Mr. Robison? You saw him on the witness stand, didn't you?

A. Yes, but I don't recall him, sir.

The Court: He is the plant superintendent there.

A. That I would know.

The Court: Did you go into his office, the plant superintendent's office, at the time you placed the two pickets out at France's property?

A. I went over to the other place and stayed with the other picket and I was there nine or ten hours and then I left there and was relieved by another agent and two other pickets.

By Mr. Py:

Q. But you did seek help from this mechanic?

A. Yes.

Q. What union did he belong to, if he did belong to a union, Mr. Evans?

A. I think the mechanics union, or I imagine the mechanics union.

Q. You didn't know him when you went up to his house?

A. No.

Q. And you went up to his house as one union man to another and asked for his help?

[fol. 125] A. Yes, and where I got the information he worked there and lived up there was from one of the pickets.

Q. He told you he didn't know how his employer would react to that?

A. No, sir.

Q. I thought I understood you to say you did feel out the employer or the company?

A. Not at the stone quarry.

Q. But this mechanic you are talking about worked for the stone quarry, did he not?

A. Yes, sir.

Q. Did you determine how the company felt about it?

A. Well, I was relieved from duty and was followed up by another agent there.

Q. Who was the other agent, do you know?

A. I am not sure. I would have to find out from the weekly reports. It could have been Bill Reagan, Kennedy, or it could have been Mowry, one of those three agents.

Q. Mr. Evans, when you say you went to the home of this mechanic how did you determine that it was located several blocks away from the France quarry?

A. It was up the road, outside the property and in the middle of the town of Bloomville.

Q. But do you recall how you found the place?

A. I told you one of the pickets knew the residence of one of the persons who worked in the plant there.

Q. Did this picket who told you this go with you to see this mechanic?

A. No. He told me it was a green house or something like that and he identified where it was.

Q. Would you be able to point out the house?

A. I don't think so.

Q. You didn't know the address?

A. No.

[fol. 126] Q. What time of the day was it when you got there?

A. It was in the afternoon. I would say it was between 5:30 and perhaps 6:00, somewhere along in there.

Q. Was it next to any landmark such as a filling station or grocery store or anything like that?

A. I don't remember that.

Mr. Py: Nothing further from this witness.

Direct examination.

By Mr. Hafer:

Q. Mr. Evans, is Teamsters Local 20 incorporated under the laws of the State of Ohio?

A. No.

Q. It is a voluntary association, is that correct?

A. Yes; it is a labor organization.

Q. At the time you talked to this unidentified mechanic did the conversation take place at his house?

A. That is correct.

Q. Who was present at the time of the conversation?

A. Himself and myself. I think perhaps there was someone in the kitchen of the house. Perhaps it might have been this man's wife.

Q. To your knowledge, was there any work stoppage by the employees of The France Stone Company at or about the time of the Morton strike?

A. No, sir, there was no work stoppage.

Q. You say you were there one day?

A. I was on there eight or nine hours.

Q. Did you stop anyone coming in or out of that France property?

A. No one was refused entrance and quite a few went in and out, that's right.

Mr. Hafer: That will be all.

[fol. 127] Thereupon, the Plaintiff called as a witness, MR. HOWARD STULTZ, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. State your name, please.

A. Howard Stultz.

Q. Where do you live?

A. 107 Jackson Street, Tiffin.

Q. For whom did you work in 1956?

A. Lester Morton.



Q. Do you still work for him?

A. No.

Q. When did you leave his employ?

A. A month ago today.

Q. And where are you now working?

A. Hansen Machinery.

Q. Where is that?

A. In Tiffin.

Q. When did you first go to work for Mr. Morton?

A. I started in May of 1950.

Q. Did you work there substantially all the time from that time until the last month or so?

A. That's right.

Q. What were your duties in August of 1956?

A. I was a mechanic and drove extra on a truck.

Q. During the month of August, 1956, Mr. Stultz, did you belong to any union?

A. Yes.

Q. What union was that?

A. Local 20.

Q. Are you familiar with the strike that occurred at Morton's place of business in August of 1956; do you know about it?

[fol. 128] A. Yes.

Q. Did you work during the strike?

A. Yes.

Q. Did you picket at all?

A. No.

Q. Did you work on the first day of the strike?

A. Yes.

Q. What did you do that day?

A. I worked in the garage as a mechanic.

Q. You did not drive a truck that day?

A. No.

Q. Did you drive a truck at all during the strike?

A. Yes.

Q. What was the first day you drove a truck during the strike; that is; how many days after the strike began?

A. About the third or fourth day; I don't just recall now just how many days it was.

Q. Did anyone else drive a truck that day for Morton?

A. Yes; Vernon Bean and Clifford Smith.

Q. Did you work together in a group?

A. Yes.

Q. What did you do?

By Mr. Stauffer:

Q. Mr. Stultz, what did you do that day?

A. Hauled sand into Toledo.

Q. Where in Toledo?

A. To Schoen Asphalt Paving Company.

Q. You were driving dump trucks?

A. That's right.

Q. Did you leave the Morton premises loaded with sand?

A. No.

[fol. 129] Q. Where did you get the sand?

A. At Dolomite, Inc.

Q. Where is that located?

A. Maple Grove.

Q. And where is Maple Grove?

A. About nine miles north of Tiffin.

Q. Where is the Schoen Asphalt Paving Company located?

A. In Toledo, Ohio.

Q. You drove there that day?

A. Yes.

Q. What did you observe when you got there? Did you observe anything unusual?

A. Well, there was some automobiles setting there.

Q. There were automobiles setting where?

A. At Schoen Asphalt Paving Company.

Q. Inside the gate or on the street?

A. Outside.

Q. Did you see any people standing about the automobiles, standing by the automobiles?

A. Yes.

Q. What were they doing?

A. Just standing around the cars talking.

Q. Did you see any signs?

A. No.

Q. What did you do? Did you drive on in?

A. Yes.

Q. Then what did you do? Did you then unload your sand?

A. No.

Q. What did you do with your truck?

A. I left it sit.

Q. You left your truck sit?

A. That's right.

Q. What about the other two trucks?

[fol. 130] A. They was left to sit, too.

Q. Why were they left there sitting?

A. On order of Mr. Schoen or whoever was in charge.

Q. Did anyone give you an order or any instructions?

A. They just came out and told us to leave the trucks sit.

Q. Who told you that?

A. The man that came out of the office.

Q. Did Mr. Morton come to the Schoen property or place of business that day?

Mr. Hafer: I move that this testimony be stricken until we have some identification of the man.

The Court: Objection overruled. He may proceed.

By Mr. Stauffer:

Q. Did Mr. Morton come to the Schoen property that day, Mr. Stultz?

A. Yes, he did.

Q. Did you leave with him in his automobile?

A. Yes.

Q. Were the trucks loaded or unloaded at the time you left the Schoen property?

A. The trucks was still loaded.

Q. Did Mr. Morton give you any instructions about the trucks as to loading or unloading them?

A. I can't recall.

Q. But you do recall that when you left the Schoen property they were still loaded?

A. Yes.

Q. How long were you at the Schoen premises?

A. About—

Q. (Interposing) Was it more than an hour?

A. No, we weren't there an hour.

Q. Less than an hour?

A. Less than an hour.

Q. Were these men that you saw there in automobiles still at the gate when you left Schoen's?

[fol. 131] A. Yes.

Q. Did you observe any signs at that time?

A. I couldn't answer that because I don't know.

Q. Do you recall seeing any signs at all while you were there?

A. No.

Q. Did you drive a truck on any other day other than the day you drove to Schoen's?

A. Yes.

Q. Do you recall whether you drove again the next day or not?

A. I don't recall whether it was the next day or not.

Q. Do you recall whether you ever drove into The France Stone Quarry during the course of the Morton Strike?

A. Yes.

Q. Do you recall whether you saw any signs at the entrances to The France Stone Company property?

A. Yes.

Q. Do you recall whether you saw the signs there on more than one day?

A. Yes, I think they were.

Q. Do you recall how many days they were there?

A. At least two days.

Q. How many entrances are there to The France Stone Company property, Mr. Stultz?

A. Two.

Q. Did you use both of them on those two days or just one?

A. Just the one.

Q. Which road does it come out onto? Do you know the name of the road?

A. No, I don't.

Q. How many signs did you see there?

A. I just saw the one sign as I went into the quarry.

[fol. 132] Q. What did that sign say, if you can recall?

A. "Morton Trucking Company on Strike," or something to that effect.

Q. Was any union's name on those signs, if you know?

A. I don't know. I don't remember.

Q. Where were you hauling to when you were going in and out of the France Stone Quarry?

A. To the Route 224 bypass around Tiffin.

Q. How far from the quarry was that, approximately?

A. Approximately ten miles.

Q. How many hours a day were you working on those particular days, Mr. Stultz?

A. An average, I suppose, of about nine hours a day.

Q. How late in the day did you work on those days?

A. I suppose around between 5:30 and 6:00.

Q. What was the latest time on each of those days that you came out of The France Stone Quarry?

A. Well, it would have to be 4:30 because they close at 4:30.

Q. Do you recall whether or not you saw that picket sign on your last trip out there?

A. I don't know.

Q. Did you see anyone at the entrance standing by with a sign?

A. Yes.

Q. Was there one person there or more than one person?

A. There was two.

Q. Did you recognize either one of them?


A. One day it was the two Combs boys.

Q. What are their first names? Would it be Jack and Joe?

A. Yes.

Q. Who else did you recognize there with the signs?

A. And Nye.



[fol. 133] Q. Who is Nye?

A. He was one of the fellows on strike.

Q. He was an employee of Morton?

A. Yes.

Q. Was he the union steward, if you know?

A. I don't know if he was the union steward then or not.

Mr. Stauffer: You may cross-examine.

Cross examination.

By Mr. Hafer:

Q. On the day or two, Mr. Stultz, that you saw picket lines at the France Quarry did you proceed to cross the picket line and go into the quarry to be loaded?

A. Yes.

Q. What were you picking up on that day? What was the nature of the load you were traveling with?

A. No. 1 and No. 2 stone.

Q. Did you have any difficulty getting loaded when you drove into the quarry area?

A. No.

Q. Was that true on both of the days you observed the pickets out there?

A. Yes.

Q. In point of distance, Mr. Stultz, how far was the picket sign that you saw from the actual quarry area where the loading was done? Was it a mile, or more or less than a mile, a half-mile?

A. That would be less than a half-mile.

Q. Could you observe from the point where the pickets were placed the actual operation of the quarry; that is, the employees in the quarry?

A. Part of it.

Q. What part of the operation could you see from that distance?

A. The part where they were loading.

[fol. 134] Q. The loading area?

A. Yes.



Q. What was the nature of the loading facility out there? What kind of equipment did they use out there?

A. They used front-end loaders.

Q. At the time your truck was being loaded on the two days you were there could you see the picket signs from the loading area?

A. No, you couldn't see the picket signs.

Q. Could you see the individuals who were in possession of those signs from the loading area?

A. Yes.

Q. What were they doing?

A. They were sitting in their cars.

Q. You could see their cars, in other words, but you couldn't see the signs; is that what you are saying?

A. That's right.

Q. In any event, on both of the days the pickets were at the entrances you were loaded as usual at The France Stone Quarry?

A. Yes.

Q. You went in as usual and left as usual, is that right?

A. Yes.

Q. At any time while you were on the premises of France's Quarry after the strike started, Mr. Stultz, was there any work stoppage that you observed there, any strike or any cessation of work?

A. None that I observed.

Q. Isn't it a fact, Mr. Stultz, that the loading facility at France's is a diesel about 500 feet from the road level?

A. It is not.

Q. Is it your testimony that the road you entered into the France Quarry was on the same level, roughly speaking, as the loading facility or loading area for the trucks?

A. No.

[fol. 135] Q. Explain to me what the relationship is in point of elevation between where the pickets and their cars were and the area in your truck was being loaded?

A. The pickets and their cars was approximately,—I'm no judge of distance now,—but I would say approximately about 40 feet higher than where I loaded with a couple of loads. I wasn't hauling 1's and 2's all the time.

Q. Is there more than one loading area out there?

A. Yes, there is several of them.

Q. Some of them are in a pit?

A. Yes, some in a pit. They have three loading areas on top of the ground.

Q. During the one or two days you were there and saw pickets some of your loads were taken from the pit and some not?

A. Yes, sir.

Q. When some of your loads were taken from the pit area could you see the pickets' cars?

A. Not from the pit, no.

Mr. Hafer: That's all I have of this witness.

The Court: Did you load directly from a crusher or from a pile with reference to the 1's and 2's?

A. We loaded out of the bin, or out of the plant itself, out of the crusher itself.

The Court: That would be above the quarry then?

A. Yes.

[fol. 136]

Morning Session  
Tuesday, April 25, 1961  
9:30 o'clock A. M.

The Court: You may proceed.

Thereupon, the Plaintiff called as a witness, Mr. ELMER B. LITRELL, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Py:

Q. Will you state your name for the record, please?

A. Elmer B. Littrell.

Q. Where do you reside?

A. 3264 Erawa Drive, Toledo, Ohio.

Q. In the months of August and September, 1956, by whom were you employed, Mr. Littrell?

A. Launder & Sons, Inc.

Q. Who is Launder & Sons, Inc.?

A. They are general contractors engaged in road construction for the State Highway Department.

Q. Are you now employed by Launder & Sons?

A. No, sir, I am not.

Q. When did you leave their employ?

A. In December, 1958.

Q. In what capacity were you employed by Launder & Sons?

A. At that time I was Field Office Manager and had charge of the batch plant area.

Q. You were a batch plant manager or in charge of it?

A. Yes, that's right.

Q. In August of 1956 was your employer engaged in a highway project, paving contract?

[fol. 137] A. Yes, sir.

Q. Where was that?

A. Fremont, Ohio.

Q. Was that known as the Route 20 by-pass?

A. Well, there were two there Route 20 and Route 53.

Q. Do you remember when Morton Trucking had a strike?

A. Yes.

Q. Where were you working then?

A. I believe it was on Route 20, if I am not mistaken.

Q. Were you using Morton's trucks on that job before the strike?

A. Yes, sir.

Q. Were those dump trucks you were using, Mr. Littrell?

A. Yes, sir.

Q. What kind of trucks did Morton use on that job?

A. Well, they were batch trucks, dump trucks equipped to haul batches for concrete paving.

Q. What do you mean by "batch trucks"?

A. Well, dump trucks that are segregated. The batches of dry materials were separated, one from the other.

Q. Where did they pick up the dry material?

A. At the batch plant.

Q. Was that operated by Launder & Sons?

A. Yes.

Q. And that plant was located on this project somewhere?

A. Yes, sir.

Q. And they would haul from there to the paver on the road?

A. Yes, sir.

Q. Do you recall how you learned of the strike, Mr. Littrell, at Morton's?

A. Well, I don't recall exactly. Let's put it this way: [fol. 138] I was informed either by Mr. Launder or someone else in responsibility that there was a strike on.

Q. After the strike, was there some arrangement made to use Morton's trucks?

A. I believe we tried to make arrangements to use them; I don't know exactly for how long.

Q. Was there an arrangement made whereby you did use the trucks?

A. I can't recall offhand.

[fol. 139] Q. After the strike did Morton's trucks appear on the job of Launder's at any time?

A. Yes, sir.

Q. Do you recall how many trucks appeared on the job?

A. I believe only three.

Q. How long did they stay on the job?

A. Just for a short period of time.

Q. Will you tell the Court why they stayed there for only a short period of time?

A. We—I received a phone call asking—from someone from the Teamsters—asking if there were trucks on the job.

Q. What did you say?

Mr. Hafer: Just a minute. Objection. I move that the last answer be stricken. We have no identification of the person allegedly making the telephone call.

[fol. 140] The Court: I will hear what he says before I take any action on the motion.

Q. Will you tell the Court who it was you received that telephone call from?

A. The person on the phone said he was Larry Evans from the Teamster Local.

Q. What did he ask you?

A. If there were Morton trucks on the job.

Q. What did you tell him?

A. Yes.

Q. What did he say to you then?

A. Well, he asked,—just a minute. There was something about a picket line mentioned if we continued to use them. Now, I asked, if I am not mistaken, whether or not a restraining order had been issued, and I don't know anything about that and I never had definite proof that a restraining order had been issued.

Mr. Hafer: I object to that, your Honor, first on the ground that the witness has testified,—

The Court: (Interposing) The answer pertaining to the restraining order may go out.

Mr. Hafer: This witness has testified that he is a managerial representative, that he was such representative at the time, and any conversation between him and another agent is not competent. I might also say that there has been no positive identification here, and I ask that I may be permitted to take the witness on voir dire with respect to this caller.

The Court: Do you want to cross-examine at this point?

Mr. Hafer: Yes, your Honor, with reference to the identity of the caller at this time, on voir dire.

The Court: Very well. Proceed.

[fol. 141]

Cross examination.

By Mr. Hafer:

Q. With reference to the telephone conversation with the person identifying himself as Mr. Larry Evans, how many times prior to that had you talked to Mr. Larry Evans on the telephone?

A. I couldn't rightfully say. That would be, oh, within a short period of time; maybe three or four times.

Q. Had you met Mr. Evans prior to the time you received the telephone call you are talking about?

A. I may have.

Q. Well, do you recall having met him?

A. I don't definitely recall it now.

Q. Did you recognize that voice as being the voice of the man you knew as Larry Evans?

A. Well, I would say that I would, yes, sir.

Q. You gave a deposition in connection with the state court proceeding, did you not, sir?

A. Yes, sir.

Q. In the course of the deposition,—

Mr. Py: (Interposing) On what page is that, Mr. Hafer?

Q. (Continuing) In the course of your deposition in the state court proceeding at the top of page 12, for the record, do you recall being asked the question: "Q. Did you recognize his voice over the telephone?" and you gave the answer, "A. I do not think I would recognize it again. I never dealt with the man before in my life, but I know who he was."

A. If I said that, then that is true.

Q. I will show you a copy.

A. I have probably read it.

Q. I will show you at the top of the page. Look at it. It is at the top of page 12. (Handing the said deposition to the witness.)

Did I accurately read the deposition?

[fol. 142] A. Yes.

Q. Let me ask you again then: when this man called you up on the telephone from the Teamsters Union and said he was Larry Evans did you at that time recognize his voice?

A. I more or less took it for granted that it was him.

Q. Did you recognize the voice as being the voice of the man you knew as Mr. Larry Evans?

A. I can't say that, no, sir.

Q. Your testimony is that the man said he was Larry Evans and you took his word for granted, took his word for it?

A. That's right.



Q. But you didn't independently recall the voice of the man you knew as Larry Evans?

A. I never knew a Larry Evans before that.

Q. You never knew him before that?

A. That's right.

Q. This telephone conversation with a Mr. Larry Evans was the first conversation you had with the man purporting to be Larry Evans, is that right?

A. Let's put it this way: I have talked with the man over the telephone.

Q. Before or after this conversation?

A. Before.

Q. Before?

A. Yes.

Q. Did you recognize this voice when the call came through on this particular occasion when a picket line was mentioned?

A. The only way I could recognize it was his voice was that I had my dealings with him over the phone. I had no authority at the time to make any decisions, no authority to make any dealings with anybody.

Q. My only inquiry here is whether or not you recognized [fol. 143] the voice of the man who called you on this occasion, whether you recognized that voice as being the voice of Larry Evans or did you merely take his word for it?

A. I took it for granted evidently, because after all I deal in good faith, too.

Q. I see.

Mr. Hafer: That's all I have, your Honor. I move at this time that his testimony be stricken.

The Court: Mr. Littrell, you have said on direct examination that Mr. Evans called you and asked if Morton's trucks were on the job, and you said later you thought it was Larry Evans' voice; now you say you don't know. What is the fact now?

A. Well, I just,—the only time, your Honor, I ever talked with Evans was over the phone and I had to assume the man I was talking to was Mr. Evans. I had never dealt with the man personally.

Redirect examination.

By Mr. Py:

Q. On the previous occasions when you talked with Mr. Evans what did you talk about, what matters did you talk about?

A. That would have something to do with Teamster business.

Q. Union business?

A. Yes, sir.

Q. On the occasion when he called you with reference to Morton's trucks you recognized it as the same voice, did you?

A. Yes, sir.

Q. And it was about union business, too?

A. Yes, sir.

Mr. Hafer: May we have a motion to strike that testimony on the grounds stated?

The Court: The objection will be sustained.

[fol. 144] By Mr. Py:

Q. Tell the Court what further conversation you had with the person you are assuming or assumed to be Mr. Evans at that time?

A. Well, I told him there were Morton trucks on the project, that's true, and there was some mention about a roving picket line, which I told him at the time that we didn't want any trouble with anyone so far as I knew, and that was the entire gist of the conversation.

Mr. Hafer: Objection, your Honor, and move that that be stricken on the grounds of no proper identification.

The Court: Overruled.

Mr. Hafer: (Interposing) Did your Honor sustain the objection before?

The Court: Yes, as to leading questions upon the part of counsel.

Q. After the telephone conversation what did you do?

A. Well, I advised the representative of Morton Trucking Company to take his trucks off.

The Court: I didn't hear that.

A. I advised the representative of Morton Trucking Company that he should take his trucks off, that since we were in a paving operation we didn't want to be in a position where we could have anything happen which would put our operation in jeopardy.

Mr. Hafer: Objection, your Honor, and move that the latter part of the answer be stricken with reference to why he told this representative that. That is certainly not binding on us.

The Court: I only want to know what was said. That is the only reason I am allowing this testimony. So far there has been no identification of the voice, that it was Larry Evans who called.

Mr. Hafer: I am talking about the conversation with this witness with a Morton representative. We don't want [fol. 145] to be bound by the reason he gave Morton's man for what he did. If he testified he made the statement, I make no objection to that.

The Court: It may stand.

Q. After you made that statement to Morton's representative Morton's trucks no longer worked on that job?

A. That's right.

Mr. Py: That's all, your Honor.

• • • • •  
Cross examination.

By Mr. Hafer:

Q. Mr. Littrell, will you tell the Court in some detail, if you will, what your duties as field office manager and being in charge of the batch plant involved?

A. Well, I kept track of the operations around the batch plant so far as trucks was concerned, but I could make no decisions on a management level, and most of the stuff I was doing was on instructions from somebody else.

Q. Did you make recommendations with regard to management policies?

A. No, sir.

Q. Did you have anything to do with the supervision of the work in the field?

A. No, sir.

Q. What duties did you have in the field?

A. Other than taking care of the,—looking after the operation of the batch plant is about all.

Q. That is a portable unit, isn't it?

A. No, sir, it is stationary.

Q. Was the batch plant located on the premises of Launder & Sons or on the job?

A. Well, it was part of the,—it is part of the project itself. We had our field office in that vicinity, too.

Q. When you were in the field did you occupy the field office where you did your work?

A. Yes, sir.

[fol. 146] Q. What work did you do when you were in the field office?

A. Well, we were mainly interested in cost, ordering materials, and taking care of labor needs that different supervisors wanted.

Q. If a supervisor came to you and asked for men it was your job to see that the men got there?

A. Yes.

Q. Do you have an accounting background?

A. Yes, sir.

Q. What degrees, if any, do you hold?

A. A B. B. A. from the University of Toledo.

Q. Are you an accountant by profession?

A. No.

Q. Are you a Certified Public Accountant?

A. No, sir.

Q. But you worked for Launder & Sons doing some accounting work?

A. Yes.

Q. What did you do specifically as the man in charge of the batch plant?

A. I made sure that they had materials and that the

trucks were running, hauling the dry batch materials, and that supplies were coming in.

Q. Part of your work was to see that the operation would be continuous?

A. Yes, sir.

Q. Did you in the course of your work make direct contact with the customer from whom you were purchasing your raw materials?

A. By phone, yes.

Q. In other words, you would place the orders for the cement or whatever other materials you needed?

A. Yes, sir.

Q. And you had the authority to do that for the company?

[fol. 147] A. Yes.

Q. Did you make those purchases on a credit basis?

A. Yes, that was customary in the industry.

Q. What was the volume of purchases for which you were responsible, say, in the year 1956 to the best of your judgment?

A. That would be hard to figure.

Q. \$50,000.00, \$100,000.00, \$200,000.00?

A. No. I would imagine several,—about in the neighborhood of \$300,000.00 or \$400,000.00.

Q. You were responsible for purchases of materials for Launder in that amount?

A. I ordered them, yes.

Q. Did the men who were the foremen actually supervising the men, the employees, report to you in connection with their labor needs on the job?

A. Yes, sir.

Q. What about the batch plant; was there a foreman of the batch plant who did the actual supervising work there?

A. No; I was it.

Q. You were the foreman at the batch plant; that is, you actually supervised the men at the plant, batch plant?

A. Yes, at the time they were there. Of course, we worked in the,—that is, we worked in conjunction with the paving superintendent and he was the one I was work-

ing under when I was there working at the batch plant. As far as the office is concerned, I was working under Mr. Launder.

Q. How many men worked at the batch plant, Mr. Littrell, excluding truckdrivers?

A. Three.

Q. Three men who worked at the batch plant itself?

A. Right.

Q. In addition to that, there would be a flow of truckdrivers coming through to get their loads?

[fol: 148] A. Yes.

Q. Were you also responsible to see to it that these truckdrivers kept moving through the batch plant and that they were not congregating?

A. Well, that was the general idea of the position I held. Of course, under the arrangements which we were working under with Mr. Morton, part of it was his because he had his own man out there.

Q. He had a foreman for his trucks there?

A. Yes; but when we were running our own, I was the pusher then.

Q. And when was it that you were running it on your own?

A. That was during the time the strike was on.

• • • • •  
Redirect examination.

By Mr. Py:

Q. Mr. Littrell, who did you talk with in the company you were employed by before you told Mr. Morton to take his trucks off the job?

A. Well, I would have had to talk to Mr. Launder if he was on the job at that time, because I couldn't make any decision relative to that without consulting him.

Q. Do you recall talking to Mr. Launder?

A. I really don't know right now, but I must have if that decision was made. If I am not mistaken,—it is a vague memory;—I did talk to Mr. Launder and he said something about that; but I couldn't tell you truthfully.

Q. Who was Mr. Launder?

A. My employer at that time.



Q. Mr. Brenner Launder?

A. Yes.

Q. What was his capacity at that time?

A. Well, at the time he was general manager, general superintendent, whatever you want to call him.

[fol. 149] Mr. Py: I think that's all, your Honor.

The Court: That will be all. Call your next witness.

Mr. Py: I wonder if we could call Mr. Evans for cross-examination with reference to this telephone call to see if we could tie that up, your Honor.

Mr. Hafer: He has already been called once. Does he have a right to call him repeatedly? Of course, it is a matter of discretion with this Court.

The Court: I think you had better refrain at this time. I assume that Mr. Evans will be called by the defense. You may have an opportunity to cross-examine him then. I think that your problem in this matter has been plain all the way through this trial. A party defendant is the Local of the union. You have got to show definitely that somebody in authority spoke for that Local. It may have hundreds of members, probably even thousands. Any one individual couldn't bind this defendant unless he had proper authority; you understand that.

Mr. Py: That is correct, Your Honor, I understand.

The Court: Both of these witnesses have failed to identify Mr. Evans. I am referring to Mr. Robison and Mr. Littrell. Therefore, any conversation that was had with him over the phone or personally, if they didn't know who it was that they talked to, if there is no identification the testimony can't stand. That is the position the Court has been taking in regard to these witnesses.

Mr. Py: I understand.

The Court: I don't know what it would avail you to call Mr. Evans again for cross-examination in connection with Mr. Littrell's testimony. You may or may not have an opportunity to cross-examine Mr. Evans later.

I think you had better call another witness.

[fol. 150] Thereupon, the Plaintiff called as a witness, MR. KENNETH LIDSTER, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. State your name, please.

A. Kenneth Lidster.

Q. Where do you live?

A. 25 Jefferson Street, Tiffin.

Q. For whom do you work?

A. The Louis O'Connell Company.

Q. Where is that company located?

A. It is on 78 Adams Street, Tiffin.

Q. Did you work for that company in 1956?

A. Yes.

Q. What was the business of that company in 1956?

A. Ready-mix and coal.

Q. What did it do about ready-mix?

A. What is that again?

Q. What is ready-mix?

A. That's ready-mix concrete.

Q. What did your employer do about ready-mix concrete?

. . . . .

Q. What did this employer of yours do about ready-mix concrete, Mr. Lidster?

A. Mixes it and hauls it out to the job.

Q. Throughout the year 1956 what was your job out there?

A. Driving a truck.

Q. What kind of a truck did you drive?

A. A ready-mix cement truck.

Q. Did you work out there throughout 1956?

[fol. 151] A. Yes.

Q. Who hauled the sand in to your employer's premises in 1956?

A. Lester Morton.

Q. Lester Morton Trucking Company of Tiffin?

A. Yes.

Q. Did that company do that in the early summer of 1956?

A. Yes.

Q. What union, if any, do you belong to?

A. At that time I belonged to Local 20.

Q. Of what union?

A. Teamsters.

Q. Who came to your employer's premises, if anyone, on union business?

A. Mowry.

Q. That was in 1956?

A. Yes.

Q. Do you know that man's first name?

A. Irvin.

Q. Prior to the summer of 1956 did Mr. Mowry occasionally come to your employer's premises?

A. Yes.

Q. Did you ever talk with him on those occasions?

A. Yes, we used to talk.

Q. What were some of the things you talked about?

A. Oh, he usually told us what was going on in the union, one thing or another.

Q. With reference to what union?

A. The Teamsters.

Q. Did he say what connection he had with the union?

A. Well, he was a business agent.

Q. For what union?

A. The Teamsters.

Q. Which local?

[fol. 152] A. Local 20.

Q. Did you have any discussions with Mr. Mowry in August, 1956? If you can't recall, say so.

A. No, I can't.

Q. Did Mr. Morton haul all of the sand that your employer used throughout the summer of 1956?

A. Yes, he did.

Q. No one else ever hauled any sand?

A. Not that I recall.

Q. Did you learn of the strike against The Morton Trucking Company?

A. Yes, I did.

Q. How did you learn about that, Mr. Lidster?

A. Mr. Mowry said,—

Mr. Hafer: (Interposing) I object to that, your Honor, what Mr. Mowry said about the strike. This could only serve to impeach Mr. Mowry's testimony, and there is no showing at this point that Mr. Mowry is an officer of the defendant in the case. In the circumstances, the plaintiff is not entitled to impeach the witness' testimony. He testified in detail where he went and there is no testimony concerning the employees at O'Connell. Hence that testimony would only serve to impeach.

Mr. Stauffer: There is testimony that Mr. Mowry talked to employees at O'Connell's.

The Court: Mr. Mowry was on the stand, was he not?

Mr. Livingston: He was the first witness.

Mr. Py: He is a business agent.

The Court: You may proceed.

By Mr. Stauffer:

Q. What did Mr. Mowry state to you?

A. Well, he come down and he says they was having a strike on at Morton and he would just as soon we didn't use his trucks until they got it settled.

Q. Can you recall anything else he said?

[fol. 153] A. Not at the time, no sir.

Q. Where were you at the time?

A. I was in the yard at the time.

Q. What yard?

A. O'Connell's.

Q. Was anyone else present that could have overheard this conversation?

A. I couldn't say for sure.

Q. Were there any other employees in the yard, if you recall?

A. Yes, there was some men in the yard.

Q. But you can't recall if anyone was with you and Mr. Mowry at the time?

A. That's right.

Q. Did you tell anyone of your conversation with Mr. Mowry?

A. I told Howard Magers, the boss.

Mr. Hafer: I object to this line of questioning. It is immaterial. We also are not bound by what the witness said to his boss.

Mr. Stauffer: The materiality is, of course,—

The Court: (Interposing) The objection will be overruled. It may stand.

By Mr. Stauffer:

Q. Who is Howard Magers?

A. He is our boss.

Q. Where?

A. At O'Connell's.

Q. Your employer?

A. Yes.

Cross examination.

By Mr. Hafer:

Q. I didn't hear very clearly your name. Is it Mr. Lidster?

A. Yes.

[fol. 154] Q. Mr. Lidster, what was the date of your conversation which you have testified to between yourself and Mr. Mowry?

A. Well, getting back that far, sir, I couldn't tell you down to the day.

Q. Could you tell us down to the week?

A. Well, that is quite a ways back.

Q. Can you tell us down to the month?

A. I am afraid I couldn't.

Q. Then as I understand your testimony, Mr. Lidster, you say that there was a conversation you had personally with Mr. Mowry, but all you can recall is that it was sometime in the calendar year 1956, is that right?

A. That's right.

Q. You have no recollection even as to the month in which the conversation occurred, is that correct?

A. On the month, no.

Q. You were a truckdriver for The Louis O'Connell Coal Company?

A. Yes.

Q. Did your duties as a truckdriver in the year 1956 include the procurement or obtaining of more equipment for the company if it needed it? Did you have anything to do with getting more equipment for the company?

A. No.

Q. Did you have anything to do with the leasing of extra equipment for your company?

A. No.

Q. Then you had no authority either to decide to use Mr. Morton's trucks, or if so, how they were to be used?

A. That's right.

Q. But it is your testimony that Mr. Mowry sometime during that year asked you what,—or stated to you rather,—that there was a strike on at Morton's and he would just as soon you would not use his trucks?

[fol. 155] A. Yes.

Q. Were you driving Morton's trucks?

A. No.

Q. He had his own men driving them?

A. He had his own drivers, yes.

Q. As far as you know this conversation, when it did occur, was a conversation between yourself and Mr. Mowry?

A. Yes.

Q. And you testified that later on you told Mr. Mowry about it?

A. That's right.

Redirect examination.

By Mr. Stauffer:

Q. How was your company in 1956 using Morton's trucks?

A. They was hauling their sand and stone.

Q. Who was?

A. Morton's trucks.

Q. Into your employer's premises?

A. Yes.



By Mr. Stauffer:

Q. Tell us again how your employer used Morton's trucks?

A. At the time he had,—he was hiring Lester Morton's trucks to haul stone and sand into O'Connell's.

Q. What did your employer do with it?

A. We used that for our ready-mix concrete.

[fol. 156] Thereupon, the Plaintiff called as a witness, MR. HOWARD MAGERS, JR., who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. State your name, please.

A. Howard Magers, Jr.

Q. And your residence?

A. Tiffin, Ohio.

Q. What is your occupation?

A. I am the secretary-treasurer of The Louis O'Connell Coal Company, a building supply concern.

Q. Did you have that same position throughout the year 1956?

A. That is correct.

Q. What does your company do in the building supply line?

A. We are known as a hard goods or materials dealer. We handle brick, concrete blocks, ready-mix concrete.

Q. What is your ready-mix concrete business; what do you do in that regard?

A. That is batching and mixing stone, sand and cement into transit mixing trucks and hauling it to jobs.

Q. Did your company do that type of work in the summer of 1956?

A. It did.

Q. Where did you get them, your materials, for that operation, Mr. Magers?

A. From various quarries in the area.

Q. Who did the hauling of that material to your property?

A. We normally had a contract hauler doing that.

[fol. 157] Q. Who did that hauling in the early summer of 1956?

A. That would have been Lester Morton.

Q. Where is Lester Morton's business located?

A. In Tiffin.

Q. What is his business?

A. Trucking.

Q. Did you have any understanding with Morton in the summer of 1956 as to what he was to do for you?

A. Yes.

Q. And what was that, please?

A. The Morton Trucking Company, hauled for us all materials that we used in the manufacture of ready-mix concrete.

Q. Did you use anyone else other than Morton in the early or late summer of 1956?

A. Yes, we did.

Q. Why was that?

A. At that time we were informed that there was a strike against Morton and we contacted our carriers to do our hauling.

Q. How did you learn about the strike?

A. To the best of my recollection our union steward at the time informed me that the strike had actually taken place.

Q. Was that your union steward?

A. Yes.

Q. Who was that union steward?

A. That was Kenneth Lidster.

Q. About when did he tell you this?

A. This is five and a half years ago. It was, I should imagine—let's see. It definitely was on the same the strike took place, in the morning of the day.

Q. What did he tell you?

A. He had said something to the effect that the Teamster Union had struck against Lester Morton and that he had [fol. 158] been informed of that by a representative of the Teamster Union.

Mr. Hafer: We object to that testimony if it is in any way to be binding upon the defendant. The only evidence we have with regard to Mr. Lidster is the witness's statement that he is a union steward. We have no evidence concerning the nature of his responsibilities or authority.

Mr. Stauffer: It is immaterial as to what union he is a steward of, your Honor. The materiality is that he was an employee of O'Connell's.

The Court: The objection will be overruled. It may stand.

By Mr. Stauffer:

Q. Can you recall anything else of your conversation with Mr. Lidster at that time?

A. There was not too much more conversation that took place at that time because we were more concerned with making sure that we would have an uninterrupted flow of materials coming into the yard.

Q. What did you then do?

A. We then made attempts to contact other haulers to come in and haul our materials for us.

Q. When did other haulers first come in after your conversation with Mr. Lidster?

A. We were able to contact some right away and get some people in to haul our materials for us.

Q. What do you mean by "right away"?

A. Within a matter of two or three hours.

Q. Did the Morton Trucking Company ever again in 1956 haul material into your property?

A. Yes. They resumed hauling materials as soon as the strike had been lifted.

Q. What month was that, if you know?

[fol. 159] A. I believe it was in October. Yes, it was in October (witness referred to paper).

## Cross examination.

By Mr. Hafer:

Q. Did you have in the year 1956 a signed memorandum of agreement or signed contract with Morton?

A. Our contract with Morton Trucking was verbal.

Q. You had no written contract providing for his services during any period of time?

A. No written contract.

Q. For what period of time prior to 1956 had Mr. Morton been hauling for you?

A. I became associated with the firm in 1952 and at the time I became associated with the firm he was hauling.

[fol. 160] Q. During the period from 1952 to 1956 did any other trucking company perform any such work as Morton did for you?

A. To 1956?

Q. Yes.

A. Not to my knowledge.

Q. What, precisely, did Mr. Morton furnish to The O'Connell Coal Company?

A. What he precisely furnished was a trucking service.

Q. Did he provide both truck and driver?

A. Yes.

[fol. 165] Q. Did you have any conversations with any representatives, any of the union business agents concerning the strike at Morton's?

A. It is possible, but I don't recall that I did have.

[fol. 166] Q. Was the decision to use other truckers made by you, yourself?

A. As such, yes.

Q. That was within the scope or in the course of your regular duties as secretary-treasurer of the company?

A. Yes.

Q. And you made that decision after learning that Mr. Morton was on strike, is that correct?

Q. At any time after August 1, 1956, were any pickets

A. That's right.  
placed at your premises?

A. No.

Q. At any time after August 1, 1956, was there any work stoppage by your employees?

A. No.

Q. Then the decision not to use Morton, I take it, was that if his trucks were on strike—or if his employees were on strike his trucks would not be available to you for your work?

A. Not necessarily.

Q. No one threatened to picket or strike you, had they?

A. No.

Q. And no one in fact picketed or struck you, did they?

A. No.

Q. But as far as you know you learned that Mr. Morton was on strike and as soon as you learned he was on strike you immediately made arrangements to secure substitute trucking services?

A. That is correct.

Q. Will you tell us then why as soon as you learned of the strike at Morton's you went out and got other trucking services?

A. This particular period during which the strike took place is part of what we call our "busy season" and we [fol. 167] wished to avoid at all any possibility of having our place picketed or having our men go out on strike.

Q. That may have been in your mind, but you had no basis for such an opinion based upon any conversation with union business agents, did you?

A. No.

Q. You had no written communications with union business agents during this time, had you?

A. No.

Q. And you had no work stoppages or picketing during this entire period, had you?

A. No.

Q. And as soon as you learned of this strike you made other arrangements?

A. That's right.

Q. You didn't want any part of Mr. Morton when he had labor difficulties; is that the substance of it?

A. Partially.

Q. And the other part was the thought in your own mind that maybe if you used Mr. Morton's trucks you might have some sort of difficulty?

A. Yes.

Q. But that was based on your appraisal of the situation and not on any communications with the business agents of the union?

A. Yes.

Q. Did you have any direct conversation with any officer of the union?

A. Only insofar as the Teamster Union steward who was in our employ talked to me.

Q. And all he did, as I understand his testimony and yours, was report the fact that Mr. Morton was on strike, is that right?

A. There again it is rather difficult to recall the exact conversation that took place at that time, and whether [fol. 168] there was any direct mention of anything else I couldn't recall at this time.

Q. But you remember that he told you that Mr. Morton was on strike?

A. There was conversation to the effect that Mr. Morton was on strike and he had been informed of that.

Q. You can't remember anything else that was said at that time, is that correct?

A. No, that is correct.

Q. During your business season had you ever had occasion in past years to bring in extra truckers?

A. No.

Q. Were the quarries from which the raw materials were delivered during the strike the same quarries from which you were receiving the materials prior to the strike?

A. Yes.



# Redirect examination.

By Mr. Stauffer:

Q. During the latter part of your cross-examination here, Mr. Magers, you were questioned about your conversation with your employee, Mr. Lidster, is that correct?

A. Yes, sir.

Q. Did he tell you how he had learned of the strike against Mr. Morton?

A. Yes. He had mentioned that Mr. Mowry, who at that time was the business agent for the union in the area, had told him.

The Court: You mentioned the name of Mr. Mowry. Did Mr. Mowry at any time ever talk to you directly about this matter?

A. It is possible that at some time before the strike took place there may have been some mention that there was a possibility that the strike would take place. Mr. Mowry [fol. 169] was with our Teamster men. Mr. Mowry was in there quite often; but I don't recall any specific conversation.

The Court: Directly or over the telephone?

A. It could have been either way, it could have been either way.

The Court: That will be all.

Mr. Hafer: So that the record is clear, we have a standing objection and move that the testimony as to the conversation between this witness and Mr. Lidster be stricken as hearsay, No. 1, and No. 2, no proper foundation has been laid with respect to the authority of Mr. Lidster to speak on the union's behalf or bind us.

Mr. Stauffer: Mr. Lidster, we heartily agree, is not the agent of the defendant, but he is an employee of one of our customers whom the agent of the defendant did encourage.

The result of that encouragement was that the employee went to his employer,—

The Court: The motion will be overruled.

Thereupon, the Plaintiff called as a witness, Mr. JAMES SCHOEN, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. State your name, please.

A. James Schoen.

Q. Your address?

A. 4329 Inverdale, Toledo.

[fol. 170] Q. What is your occupation or business?

A. Paving contractor.

Q. For whom do you work?

A. Schoen Paving, Inc., and there is also another company, C. A. Schoen, Inc.

Q. Are you an officer in those two companies?

A. Yes, both.

Q. What is your office?

A. I am treasurer in both.

Q. Did you have the same offices throughout the year 1956?

A. I did.

Q. Where is your company located?

A. 310 South Westwood, Toledo.

Q. What is the business of your company?

A. Paving contractor.

Q. You said there are two companies. Please give us the business of each.

A. C. A. Schoen, Inc., manufactures paving materials and sells to Schoen Paving, Inc., and Schoen Paving is the paving contractor.

Q. Both of those companies are located at the same property, is that not true?

A. Yes, sir.

Q. At the Westwood address?

A. Yes.

Q. What raw materials were you using in 1956?

A. In the manufacture of asphalt we used sand, stone, and liquid asphalt primarily.

Q. Who were some of the suppliers of your sand in 1956?

A. That was all supplied by Lester Morton Trucking Company.

Q. Where are they located?

A. In Tiffin, Ohio.

[fol. 171] Q. And it was located there in 1956?

A. Yes.

Q. Did you learn of any labor difficulty that Mr. Morton was having in 1956?

A. I did.

Q. About when did you learn of it?

A. It was on a Monday morning. I think it was August 20, 1956.

Q. How did you learn of it?

A. I was on the job and I was informed of it on our mobile telephone in my automobile that there was some difficulty back at the plant.

Q. Where were you at the time, in the City of Toledo?

A. Yes; close by, with a few miles.

Q. But away from the office?

A. Yes.

Q. What happened?

A. They called and said that there was some kind of trouble at the plant.

Q. Who called you?

A. Our clerk in the office.

Q. What did you do?

A. I returned to the plant immediately.

Q. How long did it take you to get there?

A. Ten minutes; maybe, something in that order.

Q. Did you see anything unusual when you got there?

A. Yes. It was very evident that there was a strike of some kind.

Q. Tell us what you saw, please.

A. Well, I saw a sign saying "Strike."

Q. Tell us exactly what the sign said?

A. As far as I can remember, I think it said "Morton—Strike."

Q. Where was the sign?

A. Stuck in the ground by the fence at the gate, the front gate to our yards.

[fol. 172] Q. How many signs did you see?

A. I am not sure. I would expect two. I mean this is a long time ago, but I am not real sure.

Q. But you certainly saw at least one such sign?

A. Yes, at least; no question about that.

Q. Did you see any people about the sign or signs?

A. Yes, there were people around.

Q. Where were they in relation to your fence and gate?

A. Well, some standing outside the premises and there were others inside.

Q. About how many people did you see out at your plant that day?

A. Including the drivers of the trucks there must have been ten or thereabouts.

Q. Exclusive of the drivers of trucks how many did you see out there, Mr. Schoen?

A. I would say about six.

Q. What were those six men doing?

A. Well, they represented the strikers.

Q. What were they actually doing?

Mr. Hafer: Objection, Your Honor, and I move that the testimony be stricken. There is no showing that this witness has knowledge of who they represented, and I object to the lack of foundation laid.

By Mr. Stauffer:

Q. What did you see them doing, Mr. Schoen?

A. Well, just standing around, as a matter of fact,

Q. You mentioned truck drivers. What truckdrivers do you refer to?

Mr. Hafer: We move that this all be stricken, your Honor. There is no identification of these persons.

Mr. Stauffer: We will tie it up. I want to go through this step by step.

By Mr. Stauffer:

Q. What did you do next?

A. Well, I went into the office and found out what the problem was about.

[fol. 173] Q. Before you went into the office did you see these trucks you mentioned?

A. Yes. The trucks, Morton's trucks, were inside the yards and hadn't been unloaded or dumped.

Q. How many trucks did you see there?

A. I believe there were three.

Q. How did you know they were Morton's trucks?

A. They were identified. He had been hauling for us for years.

Q. Did he have his name on the trucks?

A. I am sure he does, yes.

Q. Where were those trucks parked?

A. They were inside the yards and parked about the yards away from where they would have been had they been ready to dump. They were not posed ready for dumping.

Q. They were still loaded? Or were they still loaded, Mr. Schoen?

A. Still loaded.

Q. What did you do then?

A. When my office informed me what the problem was I went outside and talked to the people who were there and was informed we could not accept this material, that there was a strike.

Q. Who did you talk to outside?

A. One of the gentlemen there. I don't know him, by name and I never knew him before. The one I do know,— did you have a question?

Q. Who did you know?

A. Ed Sullenger.

Q. Who is he?

A. He had,—I should say Ed was a business representative for the Teamsters as far as I know.

Q. What Teamsters local?

A. Local 20, Toledo.

[fol. 174] Q. How did you know that?

A. Well, I had had several conversations with Ed where he represented the Teamsters in the past.

Q. Over what period of time had you had these conversations?

A. You mean having to do with this item?

Q. No. You testified you knew him over a period of time.

A. Yes. I have known Ed for five or six years.

Q. Now, how did you get to know him?

A. He had contacted us as a representative of the Teamsters.

Q. Very well. Do you have any employees that belong to that union?

A. Yes.

Q. Did you have employees who belonged to that union in 1956?

A. Yes.

Q. What union or local did they belong to?

A. Local 20 of the Teamsters and the Operating Engineers, laborers.

Q. Did Mr. Sullenger ever contact you about the business of your employees?

A. Yes, he did. We have a state-wide agreement with the Teamsters and we have been contacted about that in the past.

Q. By Mr. Sullenger?

A. Yes.

Q. Was Teamster Local 20 a party to that agreement or contract?

A. Yes, they were.

Q. And Mr. Sullenger contacted you from time to time about that contract?

A. Yes.

[fol. 175] Q. And about other union matters?

A. Yes.

Q. When you went out and talked to him on this particular you are talking about what was the substance of your conversation with him?



Mr. Hafer: I object to this testimony having to do with conversations with Mr. Sullenger, between Mr. Sullenger and this witness. He is a management representative and the statute proscribes only the inducement of employees to engage in a concerted refusal to work. It does not proscribe the coercion of employers, does not now and never did, and if we are overruled on this objection we ask for a continuing objection to this line of questioning.

Mr. Stauffer: Of course, we do contend that this Court may consider elements of this total activity.

The Court: The objection will be overruled.

Mr. Hafer: May we have a continuing objection, your Honor?

The Court: You may have it.

Mr. Stauffer: What is the last question?

\*(Thereupon, the last question was read by the Reporter.)

A. Well, it is difficult to try to bring it back after so many years, but the sum and substance of it was that we should not and could not receive this material because it was strike-bound.

Q. Anything said at that time?

A. Well,—

Q. (Interposing) Did you have any discussion about or with respect to the men that were standing there at the gate?

Mr. Hafer: Objection. I object to that question as leading. I might also point out that we have had to repeatedly object to leading questions throughout the trial of this case.

[fol. 176] The Court: Put another question to the witness.

By Mr. Stauffer:

Q. Did you discuss anything else with Mr. Sullenger?

A. Well, I don't know how to answer that because I don't know,—

Q. (Interposing) The question is, did you discuss anything else with him?

A. I am sure we must have because we had several minutes of conversation there.

Q. Did you discuss anything else that you can now recall?

A. Let me think for a moment, will you?

Q. Surely,

A. We made an arrangement or agreed to an arrangement whereby we would leave the trucks in the yards loaded, not unloaded, and that I would agree that we would not unload them until such time as it was arranged between the parties concerned that they could be unloaded or until we had some sort of legal evidence that we could or could not unload that was agreed on by all parties concerned.

Q. Why did you make that arrangement?

Mr. Hafer: Objection. That calls for speculation and a conclusion or conclusions from the witness. He is entitled to answer only as to conversations under the Court's ruling, not why he had them and draw conclusions from them.

The Court: The objection will be overruled. He may answer.

A. Of course, it is evident that we needed sand to conduct our business and that was our only source at the time. Of course, I didn't want to have those trucks out there forever and I wanted to arrange some conclusion to the problem.

Q. And so what happened then?

[fol. 177] A. Within the next day or two.—

Q. (Interposing) Excuse me. Did anything else happen that day? Specifically, were the trucks unloaded that day?

A. No, they were not unloaded that day.

Q. What happened to the trucks that day, and what about the drivers?

A. The drivers of those trucks were returned to Tiffin. I assume, by their employer, Mr. Morton, and that is all I saw of them there that day.

Q. Were those trucks ever unloaded?

A. Yes, they were unloaded when we finally got a Court Order which, as I interpreted it, allowed us to,—or allowed Morton's men to unload and continue to haul, as a matter of fact.—

Q. Did you get a Court Order?

A. Yes, I did.

Q. You received a copy of a Court Order?

A. Yes. I believe I have one still.

Q. Did you go to court to get a Court Order yourself?

A. No, I did not.

Q. Did you have any further conversations with Mr. Sullenger about the Morton strike after that day?

A. Yes, I did.

Q. How many conversations did you have with Mr. Sullenger?

A. I would say about two.

Q. Tell us about the first one of those conversations; where did it take place?

A. At our office. I believe all of them were there. He called me once by telephone and wanted to come out and see me, and another time he came out. He tried to persuade us not to use Morton's sand.

Q. I would like to inquire about the first time he came to your office following the day the trucks remained unloaded for a time.

[fol. 178] What was the substance of your conversation with Mr. Sullenger at that time, Mr. Schoen?

A. Primarily to tell us we shouldn't be using it, that we shouldn't have accepted it, that it was struck—or strike-bound material, and according to our agreement with them he said that we shouldn't use it, and of course I imagine at the time I pointed out that our agreement did not call—or actually did provide material whether or not it was union or non-union in that agreement.

Q. Who was the agreement with that you just referred to?

A. The agreement between the Teamsters and The Ohio Contractors' Association, Labor Relations Division.

Q. About how many days did this conversation take place after the incident of the trucks not being dumped?

A. I would say within a week.

Q. How many days after that was it that you had your next conversation with Mr. Sullenger?

A. After the initial strike, you mean, or the initial approach?

Q. No. The question was, how many days after this conversation about which you testified last, how many more days was it before you talked with Mr. Sullenger again?

A. I believe that all the conversations took place within a week's time or maybe ten days.

Q. Where did that conversation take place?

A. At our office.

Q. What was the substance of that conversation?

A. They all took the line to try to persuade us not to use the sand.

Q. Did you make any arrangement with Mr. Sullenger?

A. No. I might say that I did, of course, tell him that the reason I was, was because of the Court Order. I don't believe he ever gave me any kind of an argument about [fol. 179] that. I mean the Court Order was in existence and we continued to use the sand, to receive it.

Q. Did he say anything about the Court Order?

A. He hadn't been aware of the fact that there was a Court Order, I know, until I produced it.

Q. When did you produce it for Mr. Sullenger?

A. The first time he came to see me after I received the Court Order, which I believe would be the first day I started to receive the sand again, the day we dumped the trucks.

Q. The latest of the conversations you talked about with Mr. Sullenger was on the day following your receipt of the Court Order or just about that time?

A. Right.

Q. Was your plant continuing to produce asphalt, and so forth, during this week or ten days following the strike?

A. There was a period of time from the 20th—can I refer to my books, please?

Q. Sure.

A. The gray book on top is what I'll need (indicating). I don't think I will need the other one. We produced a limited amount of material on the 20th and we didn't produce any more until the 28th, and at this point I don't know why we didn't, whether it was because it was involved with the strike or whether it was for some other reason, but we didn't produce any material between the 20th and the 28.

Q. During the month following August 29th—or August 20th; Mr. Schoen, from whom did you get your sand?

A. We continued to purchase it from Morton.

Q. Did you purchase any sand from anyone else?

A. I believe we did, but I couldn't find it in our records. There are a lot of files I went through. I don't find any evidence of it here except for the fact that there was materials registered as received that were not invoiced from [fol. 180] Morton. I did for a while get some from another source, but I can't find that source now.

Mr. Hafer: We object to that testimony. The records are the best evidence. We ask that that be stricken, your Honor. In the event we are overruled, we ask for a continuing objection to this line of questioning; this testimony.

Mr. Stauffer: I was about to suggest that we would stipulate that we expect to show no damages on the part of the Schoen Asphalt Paving Company.

Mr. Hafer: We will accept the stipulation.

Mr. Stauffer: That is, no damages showing loss of work at Schoen.

A. I didn't know this this morning. I assumed that everything would balance and when they didn't is the first I was aware of this.

The Court: What do you mean when you say that you produced no material between the 20th and the 28th?

A. We manufactured no material at the asphalt plant.

The Court: But you can't now determine why that was?

A. That's right, sir, I can't. I would like to refer to one more thing: nor did we receive any sand between the 22nd and the 29th, the 22nd being the day we discharged the trucks. I believe it stopped on the 20th.

Mr. Hafer: Then under these circumstances, this being a damage case, your Honor, we move that all testimony in the record relating to events and conversations at or with Schoen representatives be stricken from the record, because we can be held liable under any theory only for those things which are illegal, and No. 2, which have caused financial injury provable by a plaintiff.

We have a stipulation in the record that they will prove no damages with respect to Schoen Asphalt Paving Company. In view of that admission, we move that all testi-



mony in the record concerning such conversations with our agents and such representatives be stricken.

[fol. 181] Mr. Stauffer: As the Court knows, the Court can consider the total activity of the union in this strike. The Court is well aware of the cases that we have cited, to the effect that under certain circumstances we may recover all of our damages as a result of unlawful activity.

The Court: I will overrule the motion.

Mr. Stauffer: I have nothing further at this time, your Honor.

. . . . .

Cross examination.

By Mr. Hafer:

Q. On the occasion of your first conversation with Mr. Ed Sullenger I believe you testified that it occurred at the premises of Schoen Asphalt Paving Company?

A. That's right, Inc.

Q. Inc. Was the conversation carried on inside your office?

A. I could only guess; I would expect not.

Q. Do you have any recollection of where, physically speaking, the conversation took place?

A. My recollection would be that it was outside of the office, but within our premises.

Q. Who besides yourself and Mr. Sullenger were present at the time of the conversation?

A. Well, there was another representative of the Teamsters there.

Q. How do you know he was a representative of the Teamsters?

A. He identified himself as such.

Q. What did he say?

A. Well, I am sure I really don't know.

Q. Do you know what his name was?

A. I believe it was Evans.

Q. Do you have any recollection at this time that the man said he was Evans?

A. The name came to mind; why, I am not sure.

[fol. 182] Q. Do you know Mr. Evans?



A. I am not sure, no. This is a long time to remember back.

Q. I understand. Your recollection is that there was a man,—maybe a Mr. Evans,—and Mr. Sullenger and yourself present at this conversation?

A. Yes.

Q. Was anyone else present at that conversation?

A. I would expect that,—

Q. (Interposing) Please, only what you can recall.

A. I am sure there were others.

Q. Do you recall who they were?

A. Not by name.

Q. What was the substance of your conversation as well as you can recall with Mr. Sullenger?

A. That we should not receive the material, should not accept it, being that it was struck material. That's the sum and substance of it.

Q. All that you can recall of it?

A. Yes.

Q. When did Mr. Morton show up on the day you were called back by telephone?

A. I can't recall exactly when he showed up, and I can't recall whether he was there when I got there or not.

Q. At any time during the course of your conversation with Mr. Sullenger did Mr. Morton appear on the premises?

A. Mr. Morton appeared on the premises that day. He took his men back; of that I am sure, but what time he came there I can't recall.

Q. You testified on direct examination that by agreement of all parties trucks would be left on your property, that Morton's trucks would be left on your property loaded, until a Court Order was produced or until the parties agreed otherwise, is that correct?

[fol. 183] A. That's right.

Q. Did Mr. Morton, yourself and Mr. Sullenger reach this agreement that day?

A. Yes.

Q. So that it was an agreement between the three of you?

A. That's right.

Q. And you entered into this agreement at the time because Mr. Sullenger insisted that you should not receive the struck goods?

A. That's right.

Q. That was the reason, because he came to you and said you should not, right?

A. That is correct.

Q. You had two conversations with Mr. Sullenger within about a ten-day period, is that right?

A. That's right.

Q. Give us a date, if you will, or give it us as closely as you can, of the first conversation; that is, the one in which you, Mr. Morton and Mr. Sullenger agreed to leave the trucks on the Schoen premises?

A. The one was the 22nd.

Q. That was the conversation, the first conversation?

A. I cannot be sure of that. I knew I had one on the 22nd because that is the day, apparently, that we discharged the material.

Q. August 22, 1956?

A. That's right, that is the date we discharged the material. He wanted to know why I did it when we agreed we wouldn't, and that is when I told him about the Court Order and I produced it.

Q. The first conversation following the one in which you and Mr. Morton and Mr. Sullenger agreed to leave Morton's trucks on the Schoen premises occurred within a few days? [fol. 184] A. Yes.

Q. Now, at the time of that agreement who was present besides yourself and Mr. Sullenger?

A. I don't believe anybody else.

Q. Where did this conversation occur; that is, the middle conversation, the second of the three conversations; where did it occur?

A. In my office.

Q. Within a few days after that there was a third conversation between yourself and Mr. Sullenger, right?

A. Yes.

Q. Where did that conversation occur?

A. In my office.

Q. Who besides yourself and Mr. Sullenger was present?

A. No one that I recall. This was a long time ago.

Q. I understand. You are an officer of The Schoen Asphalt Paving Company, the treasurer I believe you testified, is that not correct?

A. That's right, Inc.

Q. Do you have active charge over the management of that business, Mr. Schoen?

A. I do.

Q. Do you have active charge over the top-level supervision of employees of that business?

A. I do.

Q. Do you have duties in connection with hiring and firing for that company?

A. Yes.

Q. You make decisions in this area?

A. Yes.

Q. Are you the ultimate decision in this area?

A. Ask my brothers. I make the top-level decisions, yes, we all do.

Q. All right. That is sufficient. Mr. Sullenger apparently [fol. 185] was unsuccessful in persuading you to quit doing business with Mr. Morton in the second and third conversations, was he not?

A. Yes, he was.

Q. At the first conversation he had some success, but that was result of an agreement between you, he and Mr. Morton?

A. That's right.

Q. It is my understanding of the record in this case that you testified that you had no recollection and no way of ascertaining from your records why there was a cessation of operations at Schoen's between August 20, 1956 and August 28, 1956, is that correct?

A. Not exactly. I don't recall saying that I couldn't ascertain it in some way, but I have no recollection of it at this time.

Mr. Hafer: Thank you. That's all I have.

Redirect examination.

By Mr. Stauffer:

Q. Do you expect during the noon hour that you might be able to establish why this break in production occurred?

A. I hardly think so. I might. I can try, but I don't know.

Q. What is your best recollection presently as to why it occurred, Mr. Schoen?

Mr. Hafer: Objection. He is attempting to impeach his own witness.

The Court: He has been very definite on that point, that he does not recall.

Mr. Stauffer: Very well, your Honor. We would like the opportunity to question him again after the lunch hour.

The Court: Are you finished with the witness now?

[fol. 186] Mr. Stauffer: Yes, sir.

The Court: That will be all.

Thereupon, the Plaintiff called as a witness, Mr. WILLIAM H. HEIM, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. State your name and address, please.

A. William H. Heim, 450 Riverside Drive, Tiffin, Ohio.

Q. What is your occupation?

A. I am Seneca County Engineer.

Q. What was your work throughout 1956?

A. I was Seneca County Engineer.

Q. Is it part of the duties of the County Engineer to maintain the county roads?

A. That is his duty.

Q. Does the County of Seneca own all of its own trucks to do this type of work?

A. Seneca County owns a fleet of trucks, but we contract for the hauling on certain projects.

Q. Did you have any road improvement projects under way in August of 1956?

A. We did.

Q. Had the county contracted out a part of that work?

A. We contracted out the hauling of the stone for the contractor.

Q. How many projects are you speaking of?

A. I am speaking of just one contract, the hauling and furnishing of stone for the drag treatment and the surface treatment on hardtop roads in Seneca County.

[fol. 187] Q. And the County of Seneca was one party to that contract?

A. They were.

Q. Who was the other party to that contract?

A. Lester Morton Trucking Company.

Q. Of Tiffin?

A. Of Tiffin.

Q. State what that contract required Morton to do.

Mr. Hafer: Objection. That would not be the best evidence.

The Court: Yes. You may produce the contract.

By Mr. Stauffer:

Q. Would you produce the contract, please?

A. This is for the year 1956. (Producing same.)

Q. I hand you what has been marked for identification Plaintiff's Exhibit No. 3, Mr. Heim, and ask you what it is?

A. It is a copy of the contract made between Lester Morton and the County Commissioners of Seneca County.

Q. Is that the contract about which you have been testifying?

A. It is.

Q. You were the County Engineer when that contract was entered into, were you?

A. I was.

Q. What does that contract require, or what did that contract require Morton to do?

A. To furnish and haul to the site of the project the necessary stone for the execution of the job.

Mr. Hafer: I object to that and move that that testimony be stricken. The contract speaks for itself.

The Court: Overruled.

Q. Did Mr. Morton in fact perform all the work that was required of him? I mean required of him under that contract.

A. He did up to a certain date.

[fol. 188] Q. About what date was that, if you know?

A. About August 17th, I believe.

Q. Of what year?

A. Of 1956.

Q. Do you know of your own knowledge why he did not finish that work?

A. We were advised that a strike had been declared by the Teamster Union and we stopped the work then as far as Mr. Morton was concerned.

Q. You stopped the work?

A. I was the one that stopped it.

Q. How did you learn of the strike?

A. That is about five years ago and it is rather hazy, but I believe I can follow the sequence of events. I was advised by my road superintendent that there were no trucks on the job and that Mr. Morton had a strike. I can't give it to you verbatim, but I immediately told him to get our own trucks ready to do it, to do the hauling, because we could not stop the operation of the job.

Q. I want to inquire how you learned of the strike.

A. I first learned of it from my road superintendent.

Q. How else did you learn of the strike, if you did?

A. Well, it was general knowledge after awhile.

Q. Did you learn of it from someone else?

A. I believe,—I am more than certain that Mr. Evans some time after that,—probably a couple days,—came to my office and advised me that he would like to make my acquaintance as the County Engineer and,—

Mr. Hafer: (Interposing) Excuse me. We object at this time on the grounds of supervisory status. He is an elected



official and he is a representative of municipal government. The United States Supreme Court has ruled in the Dorr County case that the doctrine of pre-emption applies with respect to alleged boycott activities. The Taft-Hartley Act is clear that we must induce employees, as I said before, [fol: 189] and this was an elected official of a municipal government, not an employee within the meaning of the statute. It includes supervisors and all persons employed by a government body.

In the event our objection is overruled, we then ask for a continuing objection to this line of inquiry.

Mr. Stauffer: It is, of course, not disputed that Mr. Heim is not an employee. He is a supervisor. We are contending that this was a part of the overall conduct and it is unlawful under state law, this approach to a customer of ours through a supervisory employee.

The Court: The objection will be overruled. Proceed.

Mr. Hafer: Do we have a continuing objection?

The Court: You may have it, yes.

By Mr. Stauffer:

Q. Mr. Heim, I believe you were testifying about your conversation with Mr. Evans, is that not correct?

A. I think it was several days after that that Mr. Evans came to my office and he said he wished to meet the County Engineer, and then during the course of the conversation he asked me if I had been advised of the strike declared at Morton's, and I said at that time that I heard it, and that was the gist of the conversation. I don't believe he was in my office more than five minutes or ten minutes. He had some other gentleman with him, but I don't remember who he was.

Q. Do you see that Mr. Evans in the courtroom here today?

A. I believe that is him over at the end of the table and to the left.

Mr. Stauffer: Let the record show that the witness designated Mr. Lawrence Evans who has previously testified in this case.

By Mr. Stauffer:

Q. When was this conversation with Mr. Evans with [fol. 190] respect to the cessation of Morton's doing work for the county on this particular contract?

A. As I remember it, it was several days after.

Q. Now, have you made a computation from the records which you have with you as to the amount that the County of Seneca would have paid Morton under the contract which is Plaintiff's Exhibit 3 if Morton had completed that contract?

A. I have a copy of the amount that the,—

Q. (Interposing) The question is, have you made such a computation from such records?

A. Yes, I have made such computation.

Q. What is the amount that Morton would have so received?

A. \$3778.53.

Mr. Hafer: We object on the ground that this testimony is a summary conclusion. We do not have the best evidence in the record.

In the event that our object is overruled, we ask for a continuing objection on this ground.

The Court: Do you have your records available in case counsel wants them for cross-examination?

A. Yes.

The Court: Very well. Objection overruled.

Mr. Stauffer: You may cross-examine.

Cross examination.

By Mr. Hafer:

Q. Mr. Heim, what does the figure \$3778, forgetting the pennies,—what does that figure represent?

A. It represents the actual cost of the hauling and not the stone as it was included in the original contract.

Q. That remained to be done?

A. Yes.

[fol. 191] Q. All right. Did you pay an excise tax?

A. No.

Q. As I understand your testimony, you first learned of the strike against Mr. Morton from your project engineer?

A. The road superintendent.

Q. Excuse me, your road superintendent. As I understand you further, as soon as you learned of this from your road superintendent you immediately made arrangements to obtain trucks elsewhere to finish the work?

A. That is true.

Q. And then several days later Mr. Evans contacted you and told you that Mr. Morton was on strike, is that correct?

A. That was part of his conversation.

Q. Now, in the days intervening between your road superintendent telling you of the strike and your conversation with Mr. Evans, Mr. Heim, had you obtained substitute trucking services?

A. Yes. We used our own fleet of trucks, the county's own fleet of trucks.

Q. So that you finished the job you were on with your own or the county's own trucks?

A. With the county's own trucks, yes.

Q. So that you had already made the decision and put the decision into effect of using your own trucks before Mr. Evans ever talked to you, hadn't you?

A. Yes, sir.

Q. You are an elected official of the county government of Seneca County, are you not?

A. I am.

Q. And in 1956 you were an elected official of the government, the county government of Seneca County, State of Ohio, were you not?

[fol. 192] A. I was.

Mr. Hafer: I have no further questions of the witness, your Honor.

Mr. Stauffer: Nothing further.

The Court: That will be all, Mr. Heim, at this time.

Mr. Stauffer: Perhaps we should introduce this Plaintiff's Exhibit 3 into evidence.

The Court: The computation?

Mr. Stauffer: The contract itself. We would like to substitute copies for the original, your Honor, if we may.

The Court: Without objection it will be admitted.

Mr. Hafer: So that I may understand the posture of the record at this time with respect to Seneca County, may we have a statement from plaintiff's counsel with respect to the amount of damages he contends he is entitled to, assuming the Court finds liability in connection with Seneca County?

Mr. Stauffer: You may have a statement to the effect that the amount testified to by this witness will be an element of our damages and about which the plaintiff will testify later.

Mr. Hafer: The figure of 3700, whatever it was, is that what we are talking about here?

Mr. Stauffer: That is correct.

The Court: We will recess at this point. Court will be in recess until 1:30 this afternoon.

[fol. 193]

Afternoon Session  
Tuesday, April 25, 1961  
1:30 o'clock P. M.

The Court: You may proceed.

Thereupon, the Plaintiff called as a witness, Mr. BRENNER H. LAUNDER, who, having been previously duly sworn by the clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. State your name, please.

A. Brenner H. Lauder.

Mr. Stauffer: I would like to introduce at this time, your Honor, Mr. George Strassner of the Toledo Bar, licensed to practice in this Court and a Certified Public Accountant. He may testify later.

The Court: Very well:

Q. State your name and address.

A. Brenner H. Launder, 1935 Heatherwood Drive, Toledo.

Q. What is your occupation?

A. General contracting.

Q. With what company are you associated?

A. Launder & Son.

Q. Is that business incorporated?

A. That's right.

Q. Are you an officer thereof?

A. Yes.

Q. What position or office do you hold?

A. Secretary.

Q. Were you with the same company throughout the year 1956?

[fol. 194] A. Yes.

Q. Did you hold the same office throughout the year 1956?

A. Yes.

Q. What type of contracting work does Launder & Son, Inc., do?

A. General contracting, but primarily building and paving state highways.

Q. You build highways?

A. That's right.

Q. Were you building a highway in the summer of 1956?

A. Yes.

Q. What highway was that?

A. It was Project No. 548 and No. 499. State Route 53, and also Route 20 at Fremont, Ohio.

Q. Was that commonly referred to as the bypass of Fremont?

A. Yes.

Q. Then Launder & Son had a contract with the State of Ohio?

A. Yes.

Q. Was there more than one contract pertaining to that particular bypass?

A. Yes.

Q. How many were there?

A. Two of them.

Q. Do you have them with you?

A. Yes.

Q. May I see them, please?

(Thereupon, the witness produced some documents.)

Q. Mr. Launder, you have handed me two folders. Do these two folders contain the contracts you have testified about?

A. Yes.

Q. I wonder if you would take out of these folders all [fol. 195] correspondence and other papers that are not part of the contracts.

A. There is some writing on the back end of this which is part of the contract. I had better leave that.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 4 and ask you what that is, Mr. Launder.

A. This is the contract for Project No. 548, a state route, I believe it was 20, the Sandusky Bypass.

Q. The Sandusky Bypass?

A. I mean the Fremont Bypass.

Q. Was Launder & Son a party to that contract?

A. They are the prime contractor.

Q. And therefore was a party to the contract?

A. Yes.

Q. Who was the other party to the contract?

A. The State of Ohio.

Q. What did this contract require you to do, require your company to do, Mr. Launder?

A. It was for,—

Mr. Hafer: (Interposing) Objection, your Honor.

Mr. Stauffer: Yes, I suppose it speaks for itself.

The Court: He may tell in general what the contract is for.

A. It is for paving, grading and the drainage and structures for the highway.

Q. When was this work to be performed?

A. It was for 1956 and 1957.



Q. Was your company working on this project under this contract in the summer of 1956?

A. Yes.

Q. Did your company do all the work required by the contract?

A. No.

Q. What kinds of work did your company subcontract?  
[fol. 196] A. We subcontracted structures, part of the excavation, and most of the trucking on it.

Q. To whom did you contract the trucking that was subcontracted?

A. To the firm of Morton Trucking and to Bigelow Trucking.

Q. What part of the work did you subcontract to the Morton Company?

A. The hauling of the batches for the concrete.

Q. Was that The Lester Morton Trucking Company of Tiffin?

A. That's right.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 5, Mr. Launder, and ask you what that is?

A. This is a contract for Project No. 499, which is part of the Fremont Bypass.

Q. The parties to that contract are Launder & Son and the State of Ohio?

A. That's right.

Q. Were these two projects worked on simultaneously?

A. That's right.

Q. Were they in the same geographical area?

A. Yes.

Q. Did you perform all of the work or did your company perform all of the work called for under Plaintiff's Exhibit 5?

A. No.

Q. What part did you subcontract out?

A. The earth work, the trucking and the structures.

Q. To whom did you subcontract the trucking?

A. To Bigelow and to Morton.

Q. What part of the work was subcontracted to Morton Trucking?

[fol. 197] A. The hauling of the batches for the concrete.

Q. That was The Lester Morton Trucking Company of Tiffin, Ohio, again?

A. Yes.

Q. Explain briefly, please, the nature of the batching work that was subcontracted to Morton Trucking?

A. It was the hauling of batches which consisted of stone, sand and cement to the paver which was on the job and then dump it in the batch and return for more, return for another batch and bring it to the batching area again.

Q. How much of the batching under these two contracts was subcontracted to Morton?

A. All of it.

Q. What was your agreement with Mr. Morton?

A. The agreement with Mr. Morton was that we would pay him 75 cents per batch, the batches hauled on both projects.

Q. Look at Plaintiff's Exhibit 4 and the project referred to therein and tell us how many batches of concrete was required to be hauled under that contract, if you can, Mr. Launder?

A. I can't do that without figuring it out.

Q. Can you tell us how many square yards of concrete was required by that contract?

Mr. Hafer: We are talking about Exhibit 4, aren't we?  
Mr. Stauffer: Yes.

A. It was 111,980 square yards.

Q. Have you made a computation as to how many cubic yards that would have been?

A. For this same one on Plaintiff's Exhibit 4?

Q. Yes.

A. No.

Q. Have you made the computation for the two contracts together?

[fol. 198] A. Yes.

Q. Then may I ask how many square yards were required by the contract which is marked Plaintiff's Exhibit 5?

A. 51,267 square yards.

Q. Have you made a computation of the total square yards required by the two contracts?

A. Yes.

Q. What is that total, please?

A. The total of the two projects was 163,247 square yards.

Q. Have you made a computation of how many cubic yards that would be?

A. That would have been 40,812 cubic yards.

Q. What is the relationship between a cubic yard and a batch?

A. Each batch contains 1.38 cubic yards.

Q. Have you made a computation of how many batches were required by the two contracts, Plaintiff's Exhibits 4 and 5?

A. It would have been 29,574 batches.

Q. Do you have any records with you that would establish how many batches were hauled by Mr. Morton, the plaintiff in this case, under these two contracts?

A. Yes.

Q. May I see that, please?

(Thereupon, the witness produced some documents.)

(Said documents were then handed to Mr. Hafer and Mr. Gallon.)

Q. I will hand you what has been marked Plaintiff's Exhibit 6 and ask you what it is, Mr. Launder?

A. It is the vouchers, the cancelled checks, and an invoice from The Morton Trucking Company for the work performed on the two projects on Routes 20 and 53.

Q. And from Plaintiff's Exhibit 6 can you determine how many batches were hauled by Plaintiff Morton under these two contracts of yours with the State of Ohio?

A. Yes.

Q. What is that figure, please?

A. I would have to add them up to do it, though.

Q. Have you not made a computation of that?

A. No, all I have is the computation of the dollar value that we paid him.

Q. Would you add them up, please?

Mr. Hafer: While the witness is making his computations, your Honor, I would like to point out at least so far as my recollection goes we don't have any testimony establishing any liability with respect to Launder. We have had a Mr. Littrell on the stand and he was unable to identify the persons with whom he had conversations. At this time we have the cart before the horse when he computes damages. Mr. Littrell was the first witness, your Honor, today.

Mr. Stauffer: If the Court please, we do expect to get into the question of liability with this witness, but we do not believe that we are putting the cart before the horse, for the reason, again, that we do not need to separate liability from damages, that we must show unlawful activity during the strike, and if it is of sufficient character, and so forth, that we may recover for all of our damages. We will get to the question of liability with this witness.

The Court: Yes. Mr. Littrell failed to identify Mr. Evans as the caller.

By Mr. Stauffer:

Q. Have you made a computation of the number of batches hauled by the Plaintiff Morton?

Mr. Hafer: Excuse me. May we have a statement or ruling of the Court on this matter?

The Court: Counsel says that he expects to establish liability.

[fol. 200] Mr. Hafer: With this witness?

The Court: Yes.

Mr. Hafer: May we have a continuing objection then under Rule 9 (g)?

The Court: For what reason?

Mr. Hafer: Under Rule 9 (g) with reference to the sufficiency of complainant's Complaint.

The Court: Very well. You may have your objection.

By Mr. Stauffer:

Q. Have you made your computation of the number of batches hauled by Mr. Morton's trucks on these projects, Mr. Launder?

A. Yes, 4720 batches.

Q. How did you arrive at that?

A. From his invoice of 7/16-7/31, 3511 batches, and from the period of 8/1 to 8/22 it was 1209 batches. I believe that was all of them. I might clarify that. He hauled some more batches which we have no record of.

Q. Why have you no record of those?

A. It was during the period that he worked by the hour.

Q. Is there any way of determining how many batches that would have meant, or how many it would have included?

A. No.

Q. How much was he paid for hauling by the hour?

A. By the hour he was paid \$6.50 an hour.

Q. What was the total?

A. He worked 18 hours, for a total of \$234.00.

Q. Is there any record of what day or days those 18 hours of hauling done?

A. That was on 10/24 and 10/25.

Q. Of 196—or 1956?

A. Right.

Q. Whatever number of batches hauled by him, that you do not have a record of here; those batches were hauled in those 18 hours on those two days?

[fol. 201] A. Right.

Q. Why did Morton not finish the batching on that job?

Mr. Hafer: Objection. That calls for a conclusion from the witness.

The Court: He may answer if he knows.

A. The reason is the strike that was called against him in 1956.

Q. Did you have any discussions with anyone about that strike?

A. Yes.

Q. With whom?

A. I talked to Larry Evans about it.

Q. Who is Larry Evans, if you know?

A. He is the business agent for the Teamsters Union.

Q. How did you know he was the business agent for the Teamster Union?

A. Well, I have known Mr. Evans for quite a while. As long as I have known him he has been business agent for the union.

Q. Which union is that again?

A. The Teamster Union.

Q. Where is that union's office located?

A. Toledo, Ohio.

Q. How did you get together with Mr. Evans?

A. I called him.

Q. Why did you call Mr. Evans?

A. I called Mr. Evans to ask him if it would have been possible for us to use Morton's trucks unoperated and furnish the drivers ourselves.

Mr. Hafer: Objection to the question and the answer, your Honor, and I move that it be stricken on the ground that it is a conversation between an alleged agent of the union and a person of acknowledged managerial status. The inducement of such a person is not unlawful under Section 303 of the Taft-Hartley Act and cannot be made a [fol. 202] common law action. We therefore ask that the witness not be permitted to testify concerning the conversation.

If our objection is overruled, then we ask that we be given a continuing objection to this line of questioning.

The Court: The objection will be overruled. You may have a continuing objection.

Mr. Hafer: Thank you.

The Court: You say you called him?

A. Yes, sir.

The Court: He didn't call you?

A. No.

The Court: When did you call him?

A. It was August 11th.

Q. Do you recall where you phoned him?

A. No.

Q. Do you recall why you phoned him?



A. I called him to ask if we could lease Morton's trucks unoperated and furnish the operators ourselves, or the drivers ourselves for the trucks.

Q. Was Morton then working on the job?

A. Yes.

Q. Did you tell him you might like to do that?

A. Yes.

Q. Why was that?

A. So that we could keep on working without any interruptions due to the strike.

Q. What strike are you referring to?

A. The strike of the Teamsters against Morton Trucking Company.

Q. At the time you called him was there then a strike?

A. No, I don't believe so.

Q. What did Mr. Evans say to you?

A. He said that we couldn't use Morton's trucks if the strike was called in any form and indicated if we did we would have a picket line around our batch plant area.

[fol. 203] Q. What did he say?

Mr. Hafer: Objection to that.

The Court: Objection sustained. This was prior to the strike?

Mr. Stauffer: That is correct, your Honor.

The Court: In anticipation of a strike?

Mr. Stauffer: That is correct.

Q. What else did he say to you, if anything?

A. Nothing, to my knowledge. I can't remember any other parts of the conversation.

Q. This conversation was about the 11th of August?

A. Yes.

Q. You were then using Morton's trucks for batch work?

A. Yes.

Q. Did you continue to use Morton's trucks for batch work?

A. Yes.

Q. For the remainder of the job?

A. No.

Q. For how long did you use Morton's trucks then?

A. The last record of work that we have for Morton's trucks working by the batch was on August 22, 1956.

Q. Who did the batching after that?

A. Individuals, and a company of Launder & Son put their own trucks on.

Q. Why, if you know, did Morton do no batching after August 22nd?

A. The only I know of is that he was on strike at that time and he couldn't furnish trucks to us.

Q. Did you know that at that time?

A. I didn't understand the question.

Q. Could you tell me whether on August 22, 1956, you knew that Morton was being struck?

A. Yes.

[fol. 204] Q. Who gave you the order to stop Morton's trucks on your jobs, if you know?

A. I am not definite in my recollection who did.

Q. Who in your company would have the authority to do that?

A. It was either myself or our general superintendent that worked there.

Q. Who was your job superintendent or general superintendent?

A. Marv Lee.

Q. What do your records show as to whether Morton batched after August 22nd?

A. After August 22nd?

Q. Yes.

A. Just October 24th and 25th working by the hour.

Q. Those 18 hours that you referred to?

A. Right.

Q. Do your records show whether Morton did any batching on August 17, 1956?

A. No.

Q. They do not show that?

A. No, they don't show any trucking done by Morton on August 17th.

Q. Would your records show he had done any batching on August 17th if he had done any?

A. Yes.

Q. Do your records show whether he did any batching for you on August 20, 1956?

A. No, he didn't.

Q. He did not do any batching then?

A. That's right.

Q. Did Morton do any batching on August 21, 1956?

A. No. My records don't show that Morton did any work on August 21st.

Q. What do your records show as to whether Morton did any batching on August 22, 1956?

[fol. 205] A. On the 22nd he hauled just 12 batches.

Q. Do you have any explanation as to why batching was done on the 22nd but not on the previous two or three days?

A. Not any definite reason other than that we had information of the strike and Morton was off for a few days, and we replaced them with privately owned trucks during that period. We started replacing them on August 17th.

Q. Do you have any explanation as to why he happened to come back on the 22nd of August?

A. No, I don't recall the definite reason for him coming back on the 22nd.

[fol. 208] Thereupon, the Plaintiff called as a witness, Mr. ROBERT W. WILSON, JR., who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. State your name, please.

A. Robert W. Wilson, Jr.

Q. Your address is what?

A. 430 Jump Street, Bucyrus, Ohio.

Q. What is your business?

A. I am a stockholder in The Wilson Sand Company.

Q. Are you an officer of that company?

A. I am the treasurer.

Q. Were you such officer in that same company throughout the year 1956?

A. No.

Q. Were you connected with that company in 1956?

A. Yes.

Q. In what capacity?

A. Partner.

Q. Since 1956 the business has been incorporated, is that right?

A. That's right.

Q. Where is this place of business?

A. Rural Route 4, Upper Sandusky, Ohio.

Q. Was the location of that business the same in 1956?

A. Yes.

Q. What was the business of the partnership in 1956?

A. Excavating sand and gravel and selling it.

Q. The partnership owned a sand pit?

A. Right.

[fol. 209] Q. Who were some of the larger users of your sand in 1956?

A. The ready-mix concrete producers like Louis O'Connell in Tiffin, and Dorsey Construction in Findlay.

Q. Did you make any sales to any highway contractors in 1956?

A. One.

Q. Who was that?

A. V. Holderman & Sons.

Q. Where is that company from?

A. Columbus.

Q. What was that company doing in 1956?

A. They had a job at Findlay, Ohio.

Q. What kind of a job was that?

A. Highway construction.

Q. You had an agreement with The V. N. Holderman & Sons Company in 1956, is that right?

A. Right.

Q. What did that agreement require of you?

A. We agreed to deliver approximately 35,000 tons of sand to their job.

Q. What were you to be paid for that sand?

A. 240 delivered on the job.

Q. Delivered where?

A. In Findlay, Ohio.

Q. Within the corporation limits of Findlay?

A. I believe so. I am not sure. It is the western edge of town, I believe.

Q. Did your partnership in fact deliver or cause to be delivered all of the sand required of you by that agreement?

A. That's right.

Q. Did your partnership deliver the sand itself?

A. We either hauled it ourselves or hired it hauled.

[fol. 210] Q. Prior to doing anything under that agreement what arrangements, if any, did you make about hauling that sand?

A. We contacted The Lester Morton Company.

Q. Where is the Lester Morton Company located?

A. Tiffin, Ohio.

Q. Who did you contact there?

A. I didn't contact anybody there, but my brother did. He was a partner with me in this business. I assume he talked to Lester Morton.

Q. Do you have any personal knowledge of any agreement made with Lester Morton?

A. Only that there was a verbal agreement that he was to haul sand.

Mr. Hafer: Before the witness is permitted to continue in that area, your Honor, we are here faced with the testimony of a witness with respect to which there is not one iota of testimony by any witness in this case on the issue of liability here, and it seems to me we shouldn't take up an hour or so on damages until we find out what the liability is so that the Court can rule on the question.

Mr. Stauffer: We do not expect to use this witness or any witness having any connection with The Wilson Sand & Gravel Company on the element of liability. This is on the element of damages alone, and under the authorities cited in our trial brief we believe we may do so.

The Court: How do you expect to connect it up with any damages if no liability is established?

Mr. Stauffer: It is our position, your Honor, that if we establish that the defendant engaged in unlawful activity, then—

The Court: (Interposing) But you say you have no evidence of unlawful activity in connection with this particular job, is that correct? That is what I gathered. [fol. 211] Mr. Stauffer: That is correct, but we are saying it is our position that if we establish that the defendant conducted unlawful strike activity, if we establish that through other witnesses, activity that occurred elsewhere, then the law does not require us to segregate the damages that flowed directly from the things that the union did unlawfully.

However, the Plaintiff Morton will testify on the question of liability and on the point as to why he was unable to perform under the agreement with Wilson Sand & Gravel Company, but we will not use any witnesses directly from the Wilson Company on that point.

The Court: And it is not the strike against Morton that you are complaining of, per se?

Mr. Stauffer: I don't understand the question.

The Court: It is not the strike against Morton that you claim is the basic reason for the damages; it is other unlawful activities, is that it?

Mr. Stauffer: Perhaps your Honor is using the word "strike" in a narrow sense.

The Court: I am.

Mr. Stauffer: What do you mean by "strike," your Honor?

The Court: The striking of the Morton concern.

Mr. Stauffer: All of the activity in toto here?

The Court: I didn't say all the activity. You are including other activities, I assume.

Mr. Stauffer: Yes, your Honor.

The Court: Then you are claiming that all of the damages flowing from that activity may be grouped together.

Mr. Stauffer: Yes, sir.

Mr. Hafer: With the Court's permission I would like to speak directly to that point. Let us assume for a moment that of Mr. Morton's forty drivers twenty-five of those drivers decided to quit working or put economic pressure [fol. 212] on the plaintiff. Let us assume further as a consequence of that he couldn't fulfill Mr. Wilson's contract, or the contract he had with The Wilson Company. Under



those circumstances, I respectfully submit to the Court under the law of Ohio and under the First and Fourteenth Amendments to the Constitution under the doctrine of pre-emption this is lawful primary conduct and it was considered such even in 1930.

It is fantastic that we should be held for damages because he could not fulfill his commitments with The Wilson Company. If the record showed that he was picketed out there, and so on, that would be an entirely different matter.

The Court: It seems to me that the damages that you are about to set up here in the case of Wilson, that the liability therefor is too remote, too vague.

Here you have Mr. Morton's place struck and picketing by his own employees, and as a result thereof I think you expect to show, have shown or will expect to show, that he was unable to fulfill his contract with Wilson.

How can you connect it up with a situation like that, where there are no illegal acts performed that have any direct connection with his contract with Wilson or his inability to fulfill it?

I think it is so remote that it requires some mental gymnastics to connect the matter up.

You may proceed with it, subject to striking it after the Court has had an opportunity to examine the citations on both sides.

Mr. Hafer: May we have for the record a continuing objection to the testimony of this witness?

The Court: Yes, you may.

[fol. 213] By Mr. Stauffer:

Q. What was the arrangement between your partnership in 1956 and the Morton Company with respect to this sand to be hauled to the V. N. Holderman Company job?

A. Morton was supposed to have the first chance to haul it.

Q. Did he get that chance?

A. Yes.

[fol. 215]

Cross examination.

By Mr. Hafer:

(On voir dire.)

[fol. 225]

By Mr. Hafer:

Q. When did you learn, Mr. Wilson, that Mr. Morton's trucks were not going to be available to you to fulfill the Holderman commitment; do you recall that?

A. I don't recall exactly, no, sir.

Q. How did you gain knowledge of the fact that Mr. Morton would not be around with his trucks to help you fulfill this Holderman agreement?

A. I believe my brother called Mr. Morton and asked him if he would ready to haul more.

Q. Did you personally overhear the conversation?

A. No, I did not.

Q. So that your knowledge of Mr. Morton's unavailability came from your brother?

A. Yes.

Q. What is your brother's first name?

A. Kent.

Q. I will ask you only one more question and then let you go Mr. Wilson. Is your sole knowledge of the content of the agreement between your company and Mr. Morton's company based on your conversation with your brother?

A. That's right.

Q. Then your sole knowledge of the reason Mr. Morton did not reappear to finish his work for you is also based upon your conversation with your brother?

A. No. I had heard that there was a strike in progress.

[fol. 226] Q. From whom did you hear about this strike?

A. Other truckdrivers.

Q. Either from these other truckdrivers or from your brother you heard about it?

A. That's right.

Morning Session,  
Wednesday, April 26, 1961,  
9:30 o'clock A. M.

The Court: You may proceed.

Thereupon, the Plaintiff, called as a witness, Mr. KENT WILSON, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Py:

Q. Would you state your name for the record, please?

A. Kent Wilson.

Q. How old are you, sir?

A. Thirty-seven.

Q. Are you the brother of Robert Wilson?

A. Robert Wilson, Jr.

Q. In 1956 were you a partner in the Wilson Sand Company?

A. That is correct.

Q. You are now incorporated, are you not?

A. That's right.

Q. Now, Mr. Wilson, calling your attention to 1956 did you have a contract, with the Holderman & Sons Company, Inc. to haul or furnish sand to them?

[fol. 227] A. I did.

Q. Do you know when that purchase order was received from Holderman, approximately?

A. April of 1956.

Q. How much or in what quantity did that purchase order require you to deliver?

A. Approximately 35,000 tons.

Q. Do you know how many tons were delivered pursuant to that purchase order?

A. Somewhere around 33,000 tons.

Q. When you received that order from Holderman, what did you do with reference to The Lester Morton Trucking Company?

A. I picked up the purchase order in Columbus in Holderman's office and within the next few days I contacted Mr. Morton and asked him if he was interested in hauling the job for me.

Q. By "hauling the job" do you mean the entire job?

A. That's right.

Q. And you contacted him where?

A. At his garage in Tiffin.

Q. Did he accept the offer to haul all of the sand?

A. Yes.

Q. Did you agree on a price that you would pay him per ton?

A. Yes, 1.10 a ton.

Q. Pursuant to that contract did he start hauling sand for you?

A. A few days after I started on the job, yes.

Q. And when was that, if you know?

A. In July or August of 1956.

Q. How long did he haul at that time? Do you know how many days he hauled?

A. I don't know how many days.

Q. What was the purpose of his starting to haul in July or August?

[fol. 228] A. To build up a stockpile before they started on the job.

Q. And that is customary in the paving business, is it?

A. Yes.

Q. You build up a stockpile first?

A. Yes.

Q. And your purchase order from Holderman required that, didn't it?

A. Yes.

Q. And after the stockpile is filled you still keep running trucks after they start paving?

A. Yes, and they try to maintain their stockpile.

Q. Is there a limit to the amount that you can stockpile on these jobs?

A. Yes. He told me he was going to try to stockpile about 10,000 ton, I think, but he run out of room before he had that much stockpiled.

Q. But he ran out of room. You mean Holderman ran out of room before you reached the 10,000 ton mark?

A. Yes. That was at the crossover on Route 224 in Findlay.

Q. Do you know about how many tons he did get on the stockpile, or do you know how many tons completed the stockpile?

A. I would guess roughly somewhere around 7000 ton.

Q. 7000 tons. So that would have left approximately 25,000 tons to be hauled if 32,000 is what was left or was the total job?

A. That's right.

Q. And if the total job took 33,000, as you say, and there was 7000 there, then that would have left about 26,000?

A. Of course, at that time I had no idea whether it was going to run 35,000 or not.

Q. Did Lester Morton haul any more after the initial stockpiling operation had been completed?

[fol. 229] A. I don't believe so.

Q. Do you know why he didn't haul pursuant to his contract?

A. Mr. Morton come down and he told me, he says he had no drivers, and he said that he was sorry that he left me holding the bag because the purchase order didn't have anything on it about that he was going to haul.

Q. Did he give you a reason why he didn't have drivers, Mr. Wilson?

A. He said that he was having labor trouble.

Q. Mr. Wilson, did you use some of your own trucks and perhaps other truckers when you initially started to build up this stockpile?

A. That's right.

Q. What was the reason for that?

A. When I talked to Mr. Morton in April I told him approximately when the job was going to start and I had one day's notice to start hauling.

Q. And who would you receive that order from?

A. Mr. Plummer told me to start hauling tomorrow.

Q. He is an agent for Holderman?

A. Yes. His name is on the purchase order there, I think.

Q. When you received that one-day notice, then tell the Court what happened?

A. I called Mr. Morton and I says, "Holderman is ready to start stockpiling tomorrow", and he says, "as quickly as I have trucks available I will start hauling". When I got the purchase order from Mr. Plummer I had no definite date to start and I couldn't blame Mr. Morton for not being there right away. It is not like calling a fire truck and being there right away at a moment's notice.

Q. Then you started to use some of your own trucks and other trucks to start the stockpiling?

A. Yes.

[fol. 230] Q. Subsequent to that date did Mr. Morton start with his trucks?

A. Yes, he did.

Q. After he started with his trucks did you continue to use your own trucks?

A. No.

Q. Did you have any other outside truckers then?

A. No. I think I had a few that hauled a few days after that, but I think we should have the records here. There must have been fifty different truckers that hauled on that job.

Q. Do you have a date in mind when the stockpile was created or when you finished stockpiling initially?

A. I have no idea of what that would be.

Q. But after the stockpiling was completed, thereafter Morton had the contract to haul the balance?

A. That's right.

Mr. Py: No further questions.

Cross examination.

By Mr. Gallon:

Q. Did you bring with you today the records of the company in regard to this job which you have described?

A. I think you had them here yesterday.

Q. Are they still in court?



A. My brother is here somewhere with the records.

Q. He is here with the records someplace?

A. Yes.

Mr. Gallon: Could we excuse the witness for a moment?

The Court: Do you have those records?

Mr. Stauffer: We don't have the records right here.

Mr. Gallon: I believe they are in the jury room.

The Court: You might see if you can get them, Mr. Bailiff, from the brother of the witness.

By Mr. Gallon:

Q. Do you have the records in front of you now, Mr. Wilson?

[fol. 231] A. I have checks where I paid truckers and my copy of Holderman's bill.

Q. Calling your attention first to the testimony which you gave on direct examination, did I understand that you first discovered that Mr. Morton would not be able to complete his contract from Mr. Morton himself, is that it?

A. That's right.

Q. And I think you have testified that Mr. Morton told you he had no drivers?

A. Yes, sir.

Q. Then did he tell you why he had no drivers?

A. He said he was having labor trouble.

Q. Had you heard about this so-called labor trouble from any other source prior to Mr. Morton telling you that?

A. When they was hauling some of his drivers mentioned the fact, the ones that were hauling on the job already.

Q. What did they say?

A. That some of them was there working and some of them was not working.

Q. Did you hear from any other source prior to Mr. Morton coming over to talk to you about the fact that he had labor trouble?

A. No.

Q. In respect to your stockpile you have testified that it was supposed to be a 10,000 ton stockpile but you had orders to stop at 7000 tons, is that correct?

A. When the pile got full I think it was the superintendent for Holderman that shut it off. His job was to make sure that there was materials there and when he got his pile full he shut me off.

Q. In regard to being shut off from this stockpiling, Mr. Wilson, you were given an order not to deliver stone, is that not correct?

A. Yes.

[fol. 232] Q. Now, did that happen before you heard from Mr. Morton that he had no more drivers, at the same time or thereafter?

A. He was still hauling on the job when we got shut off, I believe.

Q. And when you say "shut off" you mean when the stockpile had run out of room?

A. Yes.

Q. After Mr. Morton had come in to talk to you in regard to running out of drivers did you hear about his labor troubles from anyone else?

A. (Witness nods head.)

Mr. Hafer: Let the record show that the answer was indicated as negative by the witness shaking his head.

Mr. Gallon: Your Honor, at this time I would like to move that the testimony of this witness be stricken because the plaintiff has not adduced any testimony from him indicating under any theory liability as to the defendants in this action. It would appear that the plaintiff himself went over to the witness's premises and withdrew his services.

The Court: . . . I will overrule the motion to strike. It may stand. You may proceed.

Mr. Gallon: We have no further questions, your Honor.

The Court: Anything further of this witness?

Mr. Gallon: One moment, your Honor.

(Thereupon, Mr. Gallon conferred with co-counsel.)

By Mr. Gallon:

Q. Mr. Wilson, you have with you now the records indicating the suppliers or the drivers or the companies which transported this stone from your quarry to this job site, is that right?

A. Yes.

Q. Could you pull out those checks and the vouchers indicating the dates involved? Mr. Wilson, in regard to [fol. 233] the use of Morton's men and other drivers I think you indicated that Mr. Morton came to you and reported that he had no more drivers about the same time you said you were shut off from the job, is that right?

A. I don't remember exactly.

Q. You say you don't remember when that stockpile was built up, is that right?

A. That I couldn't tell you definitely, no. Probably the records would show definitely if you want me to go through them here.

Q. Do you know whether you were shut off from this stockpiling in August?

A. I would say it was in August.

Q. Do you know whether it was the last week of August?

A. In the first part of August.

Q. In the first part of August. And at the time you were shut off from the stockpile do you know whether or not you still had other drivers besides Morton's drivers?

A. I think probably there was a few.

Q. Will you please look at your records for the first week of August to see what companies you used to ship or transport this stone? I withdraw that question, Mr. Wilson.

Let me ask you this question: You made a statement on direct examination that you were using a few other drivers during this period of time?

A. That's right.

Q. Did you make an independent examination of your records that you have in front of you before making that statement on direct examination?

A. No. I haven't looked at this. This is the first time I have looked at these in five years.

Q. If your brother testified from these records that you have in front of you that during this period of time, in the beginning of August, 1956, that Morton then had about [fol. 234] fifty per cent of the transportation of this material and he testified from those records, would you say that is substantially accurate?

Mr. Py: I object. He is asking the witness for a conclusion based upon someone else's testimony.

A. I didn't hear the testimony.

The Court: This is cross-examination.

Mr. Gallon: We are just inquiring as to this witness's understanding of this.

A. I didn't hear the testimony. If my brother said something, it is correct.

Q. Do you have any information, from your recollection, Mr. Wilson, that would vary from that which he testified to from the records?

A. This might not answer your question, but my brother mainly stays in the office most of the time and I am on the road and on the job all the time, and as far as billing and that stuff, that is not in my department.

Q. So, I will restate my question to you then. If your brother testified from these records that about fifty per cent of these transportation trips, this hauling, were done by Lester Morton during this period of time and he is in charge of the books, you would think that that would be an accurate statement?

A. That's right.

Mr. Gallon: No further questions.

The Court: Anything further of the witness?

Mr. Py: Yes, your Honor.

Redirect examination.

By Mr. Py:

Q. Mr. Wilson, since you were the outside man of the partnership in 1956 you had a better understanding of,—

Mr. Gallon: I object.

[fol. 235] Mr. Py: This is redirect.

Mr. Gallon: Go ahead.

Q. Mr. Wilson you were the outside man, were you not?

A. Correct.

Q. You were at the stockpile site how often, would you say?

A. At least twice a day.

Q. Did you observe any union activity at the job site while the stockpiling was initially being carried out?

A. I did.

Q. Would you tell the Court what that consisted of?

A. May we go back to Mr. Plummer again. He would call me up and say, "I'm not getting sand fast enough." I would go to the job and the superintendent, his job was to maintain a stockpile and he had bulldozer and crane operators on the job and he had to pay them for eight hours a day there and if they didn't have anything to do they were still getting paid for eight hours a day, and then anyway I asked this job superintendent on the job and Mr. Plummer what the trouble was and I was told that some of the union organizers were buttonholing the men on the job.

Mr. Gallon: I object to this.

The Court: Not what somebody told you; did you see it?

A. I saw it.

The Court: The objection will be overruled.

Q. How did that interfere with,—

Mr. Hafer: (Interposing) I object. Let us not have any more leading questions.

The Court: Yes, do not lead the witness. Let him testify.

Q. Did it interfere with the stockpiling?

A. Yes, it did. I told Mr.—, the superintendent at the site, that I didn't appreciate Mr. Plummer calling me up and I said,—

[fol. 236] Mr. Hafer: (Interposing) I object again to this.

The Court: Yes, not what you said to anybody, but what you did, what you saw and did.

A. That's right, I saw, and the statement I am making—I told this job superintendent that they shouldn't be on the job site, that they can have the road by—they can have the road but not the job site.

Q. Was that discontinued then after this conversation you had?

A. That was approximately the time when they got the stockpile built up.

Q. Completed.

A. Completed.

Mr. Py: That's all I have.

Mr. Hafer: I move that the testimony with respect to the union organizers buttonholing people be stricken, your Honor, since there is no identification in the record as to what union it was.

The Court: Yes, there is no indication as to who the union was.

Mr. Py: Can I inquire as to that, your Honor?

The Court. You may proceed.

By Mr. Py: . .

Q. Do you know what union organizers they were, Mr. Wilson?

A. They didn't talk to me and it would be hearsay, but our own personal drivers come back and told us they were Teamsters.

Mr. Hafer: Objection, your Honor, and I move that it be stricken.

The Court: That may go out.

Q. From your observations, Mr. Wilson, do you know what percentage of the stockpile was hauled by Morton and what was hauled by others including yourself?

A. I was just looking here. Here is the date of August 6th here. There was several other truckers besides Mr. [fol. 237] Morton. I will read those. A lot of those small truckers were hauling.



Mr. Hafer: Counsel is attempting to impeach his own witness. The first Mr. Wilson who testified here testified as to precisely the amounts hauled in particular periods. It is broken down daily. Any testimony in the same area from this witness can only impeach what his brother said.

The Court: I will hear what he has to say.

A. As I say, I am looking at this page. Mr. Morton's trucks was hauling better than twice the size loads as the other trucks were hauling, eight and sixteen tons. He didn't have as many trucks, but it was 8 and 16.5, and Mr. Morton's trucks 21 tons, better than twice the loads of some of the other trucks. There was a lot of these smaller trucks on.

Q. So that in number there were a greater number of trucks of others, but on the tonnage Morton was hauling,—

Mr. Hafer: Objection. He is calling for a conclusion from this witness.

The Court: Objection sustained. Counsel is leading the witness and calling for a conclusion on his part.

A. Now,—

Mr. Hafer: (Interposing) There is no question before you.

By Mr. Py:

Q. Do you know how many days it took to stockpile; do you have any recollection of that, Mr. Wilson?

Mr. Gallon: I believe the witness has testified that he does not know the exact dates of that.

The Court: Let the witness answer.

A. I would say approximately two weeks, and that is a guess.

Mr. Hafer: We move that his guess be stricken.

[fol. 238] Q. That is your best judgment?

The Court: Overruled.

A. Yes. This is five years ago.

Mr. Py: Nothing further from this witness, your Honor.  
The Court: Anything further?

Mr. Hafer: We have a motion before the Court strike his testimony as to the union organizers at the site, I believe.

The Court: I sustained that objection because there was no identification as to what union was involved.

Mr. Hafer: Then there is nothing further with respect to this witness.

[fol. 239] Thereupon, the Plaintiff, Mr. LESTER MORTON, was himself called as a witness and, having been previously duly sworn by the Clerk, testified as follows:

#### Direct examination.

By Mr. Stauffer:

Q. State your name, please.

A. Lester Morton.

Q. Are you the plaintiff in this action?

A. Yes, I am.

Q. What is your address?

A. 632 Market Street, Tiffin, Ohio.

Q. What is your business?

A. The trucking business.

Q. How long have you been in that business?

A. I have been in the trucking business since 1924.

Q. How many dump trucks did you operate in 1950?

A. Approximately 57.

Q. Did the Defendant Teamsters Local 20 conduct a strike against you in 1956?

A. Yes.

Q. In what month?

A. In August.

Q. What was the first day of that strike, if you recall?

A. August 17th.

Q. The day before the strike and the period just preceding the strike were your trucks working?

A. Yes, they were.

Q. Where were some of the places and some of the jobs that they were working at and on?

A. We was working for O'Connell's, The O'Connell Coal Company.

Q. Where is that?

[fol. 240] A. That is at Tiffin, Ohio. We was working for Launder & Son of Toledo, too.

Q. Where was that work being done?

A. That was being done at Fremont on Route 20, the bypass.

Q. Were you working any place else, Mr. Morton?

A. At Schoen Asphalt Paving at Toledo, Ohio Engineering.

The Court: Ohio Engineering?

A. Yes, sir, Wilson Sand & Gravel, A. J. Baltes, and we was working for Seneca County. There was a number of them, that I can't recall just who they were now. There was somewhere around ten or twelve different places. Then there was Ohio Engineering at Findlay.

Q. Just prior to the first day of the strike what work were you doing at O'Connell's?

A. We was hauling material from Carey and Wilson Sand & Gravel into their yards at Tiffin.

Q. State whether you had any agreement or arrangement with The O'Connell Company?

A. Yes, sir, I did.

Q. ~~What was that arrangement or agreement?~~

A. That was,—which way do you mean?

Q. What was your agreement; what had you agreed to do?

A. We agreed to haul the stone and sand, all the materials into their yards from different quarries at all times whenever it was needed.

Q. After the strike did you continue to haul all that you were required to haul to O'Connell's?

A. No, we didn't.

Mr. Hafer: Objection. I believe this testimony is for the purpose of impeaching, impeachment of their own witness.

The Court: You are speaking now of O'Connell?

[fol. 241] Mr. Hafer: Yes. I am speaking of the testimony of O'Connell's representative, Mr. Magers.

Mr. Stauffer: This is merely background leading up to the amount of damages that were sustained here, your Honor.

The Court: Very well.

Mr. Hafer: May we have a continuing objection on this O'Connell matter, your Honor?

The Court: You may.

By Mr. Stauffer:

Q. Does your company retain an accountant on a regular basis?

A. Yes, we do.

Q. Who is that?

A. That is George Strassner.

Q. For what period of time have you retained him?

A. We have retained him for the last ten years, approximately, I would say.

Q. Have you conferred with him during the course of this trial?

A. Yes.

Q. Did you go over with him this agreement you had with The O'Connell Company?

A. Yes, sir.

Q. Did you and he together prepare a memorandum on that subject?

A. Yes, we did.

Mr. Hafer: We don't have a record of an Exhibit 9.

The Clerk: Exhibit 8 is the invoice of Morton to Wilson Sand dated 9/1/56.

Q. I hand you what has been marked for identification Plaintiff's Exhibit 9 and ask you, Mr. Morton, whether this is a copy of the memorandum that was prepared by you and Mr. Strassner?

A. Yes, sir.

[fol. 252] The Court: Was that your agreement with Wilson?

A. The agreement to haul 35,000 ton, yes, that's right.

The Court: Overruled.

Q. Was that an exact or an approximate figure?

A. Approximately; it could have been more or less.

Q. How could it have been more or less?

A. If the job would take more, of course, it would be more than that. I mean you can't figure it exactly until the job is done.

Q. When was your agreement with the Wilson Company made?

A. It was along about the middle of April.

Q. Of what year?

A. 1956.

Q. Did you do any hauling under this agreement?

A. Yes, we did. We hauled some.

Q. Did anyone else do any hauling of this sand?

A. Yes. There was other trucks on there.

[fol. 253] Q. How much did you haul, approximately?

A. We hauled right around 26 or 2700 ton, if I remember right; approximately that.

Q. Why, if you know, did other truckers do hauling on that job for Wilson?

A. Well, I saw some of them hauling.

Q. Why was that, if you know?

A. It is because he called up one night and wanted trucks the next morning and of course we didn't have any available right away, and I guess he did have to go out and hire a bunch of other trucks.

Mr. Hafer: Objection. We move that his guesses be stricken from the record.

The Court: That has been testified to by Mr. Wilson.

By Mr. Stauffer:

Q. Yes. What was your situation after the stockpile was created or completed? What was your situation as to the number of trucks you were then operating altogether?

A. Was that before or after the strike?

Q. It was after the stockpile was created.

A. We had about 57 trucks available.

Q. How many trucks would it have taken to do the work as required under your agreement with Wilson?

A. About approximately 20.

Q. Would that many trucks have been available for the Wilson job from your company?

A. Yes, they would have been.

Q. Why were they not available?

A. Because we was on strike.

Q. How many, therefore, were actually available following the strike? How many drivers did you have to work on the job?

A. Well, maybe we had about,—I would like to get that question again.

Q. Did any of your drivers work on this job during the strike?

[fol. 254] A. No, they didn't.

Q. Why not?

A. Because we was struck.

Q. Is it correct that the stockpile was created before the strike began?

A. Yes, that's right.

Q. Is it correct that you did know,—

Mr. Hafer: (Interposing) He is continually leading the witness. Objection.

The Court: Yes. Let the witness testify.

Q. How many tons, approximately, remained to be hauled under your Wilson agreement after the stockpile was created?

A. Approximately 24,163.

Q. What was the average tonnage left to be hauled at the time the strike began?

A. At the time the strike began how much tonnage,—

Q. (Interposing) How much tonnage remained to be hauled about the time the strike began?

A. About 24,163.

Q. Under your agreement with Wilson what part of that were you to haul?

A. I was supposed to haul all of it.



[fol. 256] Q. What was your agreement with Launder & Son?

A. To haul all the batches on the two projects.

Q. Where were those projects?

A. On the Fremont Bypass, Route 20 and Route 53.

Q. Did you complete your contract with Launder & Son?

A. No.

Q. And why not?

A. Because we was struck.

Q. Did you complete your contract with Seneca County?

A. No, I did not.

Q. Why not?

A. Because we was struck.

Q. Did you complete your contract with The O'Connell Company?

A. No, we did not.

Q. Why not?

A. Because we was struck.

Q. How long did the strike last?

A. It lasted from August 17th to about October 5th, I believe.

Q. Did you meet with the union officials during the strike?

A. Yes, we did.

Q. For what purpose?

A. Negotiating a contract.

[fol. 257] Q. During the course of the strike did you ever go to The France Stone Company?

A. Yes, I did.

Q. Did you see anything unusual on any of your trips there?

A. Yes, I did.

Q. What was that?

A. I saw a strike sign out at the entrance to the stone quarry.

Q. What did you do?

A. I got out of the car. I had my camera with me and I took a picture.

(Thereupon, the said photograph was handed to Mr. Hafer by Mr. Stauffer.)

By Mr. Stauffer:

Q. I hand you what has been marked Plaintiff's Exhibit 13, Mr. Morton, and ask you what it is.

A. That is the picture that I took.

Q. Do you know about when you took it?

A. I don't recall. It was next,—it was right around the 23rd or 24th, it was.

Q. Was it a few weeks after the strike began or a week?

A. It was the next week following the strike in August.

Q. Of what year?

A. 1956.

Q. There are two cars parked there. What road are they parked parallel with?

A. That is parallel with Route 19. That is a county road.

Q. Of what county?

A. A Seneca County road.

Q. What is the road that leaves that road at right angles in the photograph?

A. That is the roadway that goes into the quarry.

Q. Do you know whether that is a public or a private road?

[fol. 258] A. Yes, a private road.

Q. Do you know whose road it is?

A. The France Quarry's.

The Court: You may suspend at that point for fifteen minutes.

Mr. Stauffer: I would like to ask him one more question and then I will dismiss him.

The Court: Proceed.

By Mr. Stauffer:

Q. Can you identify the person in that picture?

A. Yes; that is Dallas Nye.

Q. Who is Dallas Nye?

A. He was one of the drivers.

Q. One of what drivers?

A. Morton's; or one of my drivers.

Q. Was he on strike?

A. Yes, he was.

Q. How did he spell his last name?

A. N-y-e, I believe.

Q. His first name is Dallas, D-a-l-l-a-s?

A. Yes.

Q. Who was the general contractor that was building the bypass off Route 25 at Findlay to whom you were to haul sand?

(Thereupon, the last question was read to the witness by the Reporter.)

A. V. N. Holderman & Son.

The Court: What was your former testimony, that it was Launder?

A. I think I said Launder. I got the two jobs mixed up.

Q. In 1956, Mr. Morton, when repairs were required to be made to your trucks who made them?

A. Our mechanics in the garage made them.

[fol. 259] Q. How many mechanics did you have working in the garage in August, September and October of 1956?

A. Well, we had six to eight mechanics.

Q. At that time?

A. Yes.

Q. Did they work throughout those months?

A. Yes, they did.

Mr. Stauffer: At this time we would like to move that Plaintiff's Exhibits 9, 10, 11, 12 and 13 be admitted.

Mr. Hafer: I will have to look at them. My recollection is not too clear. Exhibits 9 and 10 are the schedules of O'Connell.

The Court: That's right.

Mr. Hafer: And Seneca County.

The Court: That's right.

Mr. Hafer: Those two exhibits are in the stipulation entered into and I am willing to let them in.

The Court: How many do you have altogether, five or six?

Mr. Stauffer: There are six exhibits.

The Court: What is your Exhibit 13?

Mr. Stauffer: Exhibit 13 is the photograph, your Honor.  
The Court: I see. Was that the last one?

Mr. Stauffer: Yes, sir.

[fol. 260] Cross examination.

By Mr. Hafer:

Mr. Hafer: At this time, your Honor, we have a stipulation to propose, and it is as follows:

It is hereby stipulated by and between Plaintiff and the Defendants in this proceeding, through their respective counsel, that the business of Lester Morton Trucking Company and the businesses of the alleged neutral or secondary [fol. 261] employers, identified as customers of Morton, all affect interstate commerce within the meaning of the National Labor Relations Act, that is, the business of the customers affect such interstate commerce.

The Court: Very well.

Mr. Stauffer: That will be agreeable, providing it reads "customers" or "suppliers."

Mr. Hafer: Of course.

By Mr. Hafer:

Q. How many trucks were you operating, Mr. Morton, between August 1st and August 15th, 1956?

A. Approximately 57.

[fol. 275] By Mr. Hafer:

Q. How many meetings, Mr. Morton, do you recall attending during the strike with the union for the purpose of reaching a settlement of that strike?

A. Well, I can't say exactly how many meetings there was. It is my recollection there was—we met at least once a week.

Q. There were a large number of meetings, as you recall it, is that correct?

A. There was maybe six or eight, or there might have been ten.

Q. And those meetings ultimately resulted in a contract, did they not?

A. That's right.

Q. About when was that, do you recall?

A. It was on a Friday afternoon. I don't recall the date, but I think it is the 5th of October.

Q. Did the strike end just about the time the contract was signed, Mr. Morton?

[fol. 276] A. Yes.

Q. I show you what has been marked Defendants' Exhibit D, Mr. Morton. I wish—

Mr. Stauffer: We will object to this line of questioning, if the Court please, if it has to do with anything except impeachment of this witness on the ground that it is immaterial.

The Court: I don't know what counsel is getting at.

Mr. Stauffer: We have not gone into this area on direct.

The Court: What area is it you are getting into now?

Mr. Stauffer: I have been presented with a copy of a union agreement purportedly—I believe correctly representing a copy of the contract between the plaintiff and the defendant. It is dated October 5, 1956. We are not complaining about anything that happened on or after October 5, 1956. I don't think it is an issue in this case.

Mr. Hafer: Are you finished?

Mr. Stauffer: Yes.

The Court: What is your purpose?

Mr. Hafer: The purpose is primarily to show the Court what this thing was all about, this controversy, and to show the Court how it ended. This is relevant, if nothing else, as going to the issue of punitive damages.

I propose to show through this witness and our own that we had a legitimate labor activity seeking to get a labor contract and not engaged in a conspiracy to destroy his business. I want to show what happened in our negotiations and how we settled them.

On the question as to whether or not this is within the scope of the direct examination, your Honor, this witness on direct examination testified to several negotiating meetings during the course of this strike. This is the last one

of a series of meetings and I think it is in the area opened by counsel for the plaintiff.

[fol. 277] The Court: I can see where the inquiry along this line might have some bearing on their claim for punitive damages. For that purpose you may go into it.

Mr. Hafer: That is the principal purpose I had in mind, your Honor.

The Court: Very well.

By Mr. Hafer:

Q. I show you what has been marked Defendants' Exhibit D and ask you whether or not a copy of the collective bargaining agreement which you entered into with Teamsters Local 20 is contained therein? Is that a copy of that collective bargaining agreement?

A. Without going through it—

Q. (Interposing) Take as much time as you wish to go over it, Mr. Morton.

A. I would have to have my contract. I would say it was the same one.

Q. I want you to be sure this is the same one, Mr. Morton?

A. I would have to get my contract.

Q. Take whatever time you want to do it.

Mr. Stauffer: Is this a signed original?

Mr. Hafer: It is a photostatic copy of the signed original.

The Court: Was that a part of Defendants' Exhibit B, the contract?

Mr. Hafer: No, sir.

The Court: I didn't think so. My record indicates that Defendants' Exhibit B is the group of strike ballots, the secret ballot that was taken.

Mr. Hafer: Before the strike.

The Court: Yes.

Mr. Hafer: Perhaps I did not accentuate it or enunciate it clearly enough, your Honor. This is "D", not "B".

The Court: Very well.



By Mr. Hafer:

Q. Have you had an opportunity to thoroughly examine the document, Mr. Morton?

[fol. 278] A. Not thoroughly.

Q. Are you satisfied that this is a copy of your agreement of October 5, 1956, with the Teamsters?

A. Not unless I had my copy and went through it, I would say.

Mr. Hafer: Do we have a stipulation or—

Mr. Stauffer: (Interposing) I don't want to hold this thing up.

(Thereupon, there was a short discussion off the record between counsel for the parties.)

Mr. Hafer: Counsel for plaintiff and the defense offer the following stipulation.

It is agreed between the parties that Defendants' Exhibit D is a true and accurate photostatic copy of the original signed agreement entered into in the year 1956 between Morton Trucking Company and Teamsters Local 20.

The defense reserves to itself the right to make a word for word examination of it and should it appear that there are any errors or inconsistencies between the original contained in the plaintiff's file that the plaintiff reserves the right to withdraw from the stipulation. Is that satisfactory?

Mr. Stauffer: That is agreeable, your Honor.

Mr. Hafer: Then we offer the document in evidence at this time.

The Court: It will be admitted.

By Mr. Hafer:

Q. During your negotiating meetings with Teamsters Local 20 during the strike you consistently refused to enter into a contract with that union, did you not, until such time as it organized your competitors?

A. During the whole agreement or during the whole—

Q. (Interposing) During the period of negotiations which occurred during the strike isn't it a fact that during that

strike you repeatedly insisted that they organize your competitors and then you would sign with them?  
[fol. 279] A. During the strike?

Q. Yes, during the strike.

A. That is not true.

Q. You never took that position at all then?

A. I did before the strike.

Q. Before the strike?

A. That's right.

Q. But not after the strike started?

A. No.

Q. You never took that position after the strike started?

A. I don't recall taking that position after the strike started.

Q. With anyone?

A. With anyone? Who do you mean?

Q. Strikers, Teamster Local 20 officers, or the Local 20 business agents.

A. No.

Q. Not during the strike?

A. Not during the strike because I knew there had to be a contract.

Q. The strike was in progress prior to August 31, 1956, was it not?

A. When was that?

A. August 31, 1956?

Q. Yes.

A. That's right.

Q. And it was in progress subsequent to August 31, 1956, was it not?

Q. Subsequent to, after.

A. After.

Q. On about August 31, 1956, you prepared a letter to all of your employees, did you not?

A. I don't recall of preparing a letter.

Q. Do you deny that?

A. I don't recall of preparing a letter.

[fol. 280] Q. I show you what has been marked Defendants' Exhibit E. I want you to read it over for a minute. Have you finished reading it, Mr. Morton?

A. Just a minute. I want to read this over again, your Honor.

Q. You read it over once, haven't you?

A. Yes.

Q. Do you want to read it again?

A. Yes.

Q. All right. You may read it a second time, Mr. Morton. Have you finished reading it, Mr. Morton?

A. Yes.

Q. At the top of Exhibit E appear the words in large print, "LESTER W. MORTON, HAULING CONTRACTOR, FINDLAY ROAD, TIFFIN, OHIO"; is that the letterhead of your company?

A. At the top, yes, sir.

Q. Then it says: "To all employees of Lester Morton Trucking Co.:", doesn't it?

A. Yes.

Q. And after several paragraphs it says, "Sincerely, Lester Morton," doesn't it?

A. Yes, sir.

Q. And a signature in ink over that?

A. Yes, sir.

Q. Is that your signature, Mr. Morton?

A. Yes, sir.

Q. Do you recall now, Mr. Morton, having a letter prepared over your signature and distributing it to your employees?

A. My counsel and I prepared that.

Q. But you signed it, did you not?

A. Yes.

Q. And then you distributed it to the employees of your company?

[fol. 281] A. Yes.

Q. To strikers and non-strikers?

A. Yes, sir.

Mr. Bafer: We offer it in evidence for impeachment purposes, your Honor.

The Court: Without objection it will be admitted.

[fol. 312] Thereupon, the Plaintiff called as a witness, Mr. RANSOM TALLBEE, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Stauffer:

Q. Would you state your name, please?

A. Ransom Tallbee.

Q. What is your residence? Where do you live?

A. Tiffin, Ohio.

Q. For whom do you presently work?

A. Lester Morton.

Q. Did you work for Lester Morton in 1956?

A. I did.

Q. Did you work for Mr. Morton during the strike in 1956?

A. No.

Q. State whether or not you appeared at Morton's garage property during the strike at all?

A. In front of the garage, yes.

Q. Why did you not go to work during the strike?

A. Well, there was two or three reasons.

Q. Tell us those, please.

A. Well, one was because,—well, I didn't want to have no trouble. If I had went in and went to work and went to hauling, why I would probably have trouble.

[fol. 313] Mr. Hafer: Objection and move that it be stricken as speculation by the witness.

The Court: Overruled. It may stand.

Q. Proceed to tell us why you did not go to work.

A. Well, one was because that they said if I went to work that all the guys working in there, they would have their union cards pulled and wouldn't get to work any more in Ohio.

Q. Who said that?

A. Lots of them said it, but one personally I know, Kennedy,—I believe his name is Kennedy,—he told me.

Q. Who is Kennedy?

A. Well, he is one of the union representatives, I guess. He was always — they took it in turns being over there with us.

Q. A representative of what kind of a union?

A. Teamsters.

Q. Where did that Teamsters Union have its office?

A. In Fremont.

Q. Did you ever go to that Fremont office?

A. Yes.

Q. To union meetings?

A. Yes.

Q. Would you have been able to belong to the Teamsters Union if your union card had been pulled?

Mr. Hafer: Objection. It calls for a conclusion from the witness.

A. I don't think so, but that is what they told us.

The Court: It may stand.

Q. They told you that you wouldn't be able to belong to the union?

A. Yes. They said we wouldn't be able to work anywhere in —

The Court: (Interposing.) Who told you that?

[fol. 314] A. Well, the guys that was there with us that come over and stayed with us, one of the union representatives.

Q. Can you name them?

A. Well, one of them was Kennedy, and I can't think of the other guy's name.

Q. Were there any other reasons why you did not go to work during the strike?

A. That is about all.

Q. State whether any trucks of Morton's left his garage during the strike?

A. They did.

Q. Did you see them?

A. Yeah.

Q. What happened about those trucks?

A. What happened about them?

Q. Yes.

A. I don't know what happened about them after they left out of my sight, but they was followed by some of the fellows.

Q. Followed by whom?

A. Well, there was Evans, the Combs, the two Combs boys, Marcum and Taylor. They usually went.

Q. Did that have anything to do with your not going to work?

Mr. Hafer: Objection. This is certainly leading.

The Court: Yes, it is leading.

Mr. Hafer: And it is impeaching his own witness because he has already asked him what all his reasons were for not going to work.

By Mr. Stauffer:

Q. What effect, if any, did that have upon your not going to work?

Mr. Hafer: Objection. He is impeaching his own witness. He has asked for a complete statement of his reasons and he has been given them. Now he is trying to go over it again.

[fol. 315] Mr. Stauffer: If the Court please, he testified that there were several reasons and he has given just one.

Mr. Hafer: He has given two and he said he had no others.

The Court: He said he had several reasons in the beginning. He has given reason one. That's all that I have heard.

Mr. Hafer: He has given two reasons, your Honor; "I didn't want no trouble", and 2, "I would have my card pulled," and he referred to a conversation with the man named Kennedy.

The Court: I included that all in reason one. He was discussing reason one when he made that statement.

Mr. Hafer: And then he was asked whether he had any others and he said no.

The Court: Put a question to the witness.



By Mr. Stauffer:

Q. What effect did Morton's trucks being followed by Combs and others have upon your not working, if any?

Mr. Hafer: Objection. It is leading and it is self-serving and an attempt to impeach his own witness.

The Court: He may answer.

A. Well, I didn't want to go in and take a truck out and be followed because that would end up in me maybe getting hurt and I didn't go for that kind of thing myself.

Mr. Stauffer: You may cross-examine.

Cross examination.

By Mr. Hafer:

Q. What do you mean "get hurt"?

A. What I mean?

Q. Yes.

A. What I said.

Q. You tell us what you meant by getting hurt. Who was hurt?

[fol. 316] A. No one was hurt as I know of.

Q. All right. That is precisely the point. Who else did you talk to other than Kennedy by name?

A. Like I said, I don't remember the other guy's name that was over there.

Q. All right. Now, what, precisely, did Kennedy say to you as well as you can recall it?

A. He said the guys that went in there to work, that was working through this strike, would have their card pulled.

Q. Did you have your card at that time, or did you have a card at that time?

A. Sure. I think I had a card then. I think I had.

Q. Did you attend the strike vote meeting?

A. I beg your pardon.

Q. Did you attend the strike vote meeting?

A. Yes.

Q. Did you vote?

A. Sure.

Q. Do you remember what that vote was?

A. I voted not to strike.

Q. I didn't ask what you voted. Do you remember what the result of the vote was?

A. Sure.

Q. It was to strike, wasn't it?

A. It was to strike.

Q. The majority of the people wanted to strike, didn't they?

A. That is what the vote was.

Q. Didn't you want a wage increase?

A. Sure.

Q. Did that have anything to do with your supporting the strike, the fact that you might get a wage increase if you went on strike?

A. That was the whole idea.

[fol. 317] Q. That was the whole idea of the strike, wasn't it?

A. That's right.

Q. Did you want a wage increase?

A. Why, sure.

Q. Did you support the strike because you wanted a wage increase?

A. Well, I didn't support it too much. I was mostly a bystander and the other guys talked it up, not me.

Q. Bean went to work, didn't he?

A. Who?

Q. Bean. Do you remember him, the foreman?

A. Yeah.

Q. He still works there?

A. Yeah.

Q. He worked all the time, didn't he?

A. He sure did.

Q. Did he get hurt?

A. That,—no, not as I know of.

Q. Did you see anybody get hurt on the picket line?

A. No.

Q. Did you see anybody get hurt while you were driving—or while they were driving a truck?

A. No.

Q. Then your notion about getting hurt is something in your own head, isn't it? It is not based on anything that happened on the picket line, is it?

A. It is based on a lot of talk.

Q. Based on a lot of talk by whom?

A. Well, all the guys.

Q. The fact is that no one was hurt on that picket line; isn't that the fact?

A. That's a fact.

Q. The fact is that none of the men that drove in and drove out of there during the strike were hurt; that's a fact, isn't it, so far as you know?

[fol. 318] A. As far as I know.

Q. Now, how many times did Evans follow a truck?

A. I didn't count them.

Q. More than twice?

A. I'd say so.

Q. Did you see any of those trucks come back?

A. Yeah.

Q. Were any of those trucks damaged?

A. Not as I know of.

Q. Were any of those drivers injured?

A. Not as I know of.

Q. The fact of the matter is that anybody that wanted to go in or out of those premises did so without anybody interfering with him in any physical manner, isn't that true?

A. Well, as far as I know it is. I never seen no trouble.

Mr. Hafer: Nothing further.

The Court: Anything further?

Mr. Stauffer: I think that's all, your Honor.

The Court: That's all.

Mr. Stauffer: I am afraid I said he was our last witness, but we would like to put on Mr. Strassner, our accountant, very briefly.

The Court: We will recess at this point. You may want to check on your accounting matters.

[fol. 345]

## COLLOQUY BETWEEN COURT AND COUNSEL

The Court: There has been included in the motion a move to dismiss the Seneca County claim for the reason that they discontinued voluntarily their connection with the plaintiff and not through pressure and that they discontinued because of the primary strike. The witness who testified on the Seneca County question was the county engineer and I think he was the only one, was he not?

Mr. Stauffer: That is correct, your Honor.

The Court: William H. Heim, of Tiffin, Ohio, Seneca County Engineer, speaking of Mr. Morton, "He performed until August 17th and then we were advised by our road superintendent that Morton had a strike and then I stopped his work. Evans called at my office and asked me if I knew that a strike had been declared against Morton and I said that I did."

On cross-examination he said: "We had made the decision to discontinue with Morton several days before Evans visited."

Now, what is there in the record to hold Seneca County in this case?

[fol. 346] I think I have given in substance substantially the important testimony on that question.

Mr. Stauffer: My recollection with respect to the County Engineer's testimony is that the union agent who called Mr. Heim indicated that he wanted Heim's cooperation and Heim said in effect that he would have it. My notes show that Heim also testified that had it not been for the strike Morton would have done this work:

The Court: But am I correct in quoting him on cross-examination as having said, "We had made the decision to discontinue with Morton several days before Evans visited."

Mr. Stauffer: Yes, I think you are correct. I am sure he did say that, among other things.

The Court: If it was a voluntary discontinuance on his part, why should Seneca County be continued in this case, the Seneca County claim?

Mr. Stauffer: If the Court gives that part of his testimony the most weight, even after considering all of this testimony of Heim, then the plaintiff could only, as we do very strongly, fall back on the concept of the totality of the effort that certainly as a result of the strike we lost that job and we would not have lost it but for the strike.

Mr. Heim testified that he learned of the strike and if the Court believes that the decision to discontinue Morton was entirely voluntary on the part of the County Engineer, then nevertheless it is a part of our total damages flowing, we believe, from the total effort of the union.

The Court: I think in view of Mr. Heim's conclusion on cross-examination I would be inclined to sustain the motion as to his connection with this case, and I would be inclined to sustain the motion as to the claimed damages as to attorney fees.

[fol. 347] As to all other matters I would defer action on the motion.

You may proceed with the defense.

Mr. Hafer: I am not sure I understood the Court, that is, as to attorney fees and Seneca County:

The Court: They are stricken from further consideration.

Mr. Hafer: Thank you.

Mr. Stauffer: For the record, your Honor, we have an objection.

The Court: You may have your objection.

[fol. 357] Thereupon, the Defense called as a witness, LAWRENCE EVANS, who, having been previously duly sworn by the Clerk, testified further as follows:

Direct examination.

By Mr. Hafer:

Q. You have already testified in this case, have you not?

A. I have.

Q. Mr. Evans, you are an officer of the Teamsters Union, are you not?

A. I am.

Q. What is your address? First, what is your business address, Mr. Evans?

A. 435 South Hawley.

Q. And your home address?

A. 543 Clifton Boulevard, Toledo 7, Ohio.

Q. I show you what has been marked as Defendants' Exhibit M, Mr. Evans, and ask you to identify for the record that document, if you will, please.

A. This was a letter sent out to Mr. Lester Morton on July 18, 1956.

Q. By you?

A. Yes, sir.

Q. What circumstances prompted the sending of this letter?

A. To request a meeting to negotiate a contract to cover his employees working in his company.

Mr. Hafer: I might explain to the Court what we are going to do. What we propose to do through Mr. Evans is to fill in with a little more specificity the events leading up [fol. 358] to this strike so that your Honor will have it clearly in this record.

We move that Defense Exhibit M be received at this time also, your Honor.

Mr. Stauffer: No objection.

The Court: It will be admitted.

I believe you said, Mr. Evans, you are an officer of Local 20?

A. Yes, your Honor.

The Court: What office do you hold?

A. Trustee, sir.

By Mr. Hafer:

Q. I show you what has been marked as Defense Exhibit N and ask you to identify it for the record.

A. This is a letter from Mr. Morton's attorney advising that he represented the company.

Q. And asking for—or indicating there would be a meeting in the near future, is that right?

A. Yes.



Mr. Hafer: We move that Exhibit N be received in evidence.

Mr. Stauffer: No objection.

The Court: It will be admitted.

Mr. Hafer: Exhibit N is dated July 26, 1956, your Honor.

The Court: Very well. Proceed.

By Mr. Hafer:

Q. What happened next after receiving this letter in connection with the progress of either your negotiations or your meetings with the employees? What was the next concrete event after July 26th?

A. You mean the members' action or the company?

Q. Either one. What happened chronologically after receipt of Defense Exhibit N?

A. I believe there was a meeting held around the 8th of August, if I remember correctly, or somewhere around there.

[fol. 359] Q. Who attended?

A. Correction. Before that there was a meeting between this letter, the first letter, and the 18th; and the letter from the attorney, if my remembrance is right, I think we had a meeting in Fremont with Mr. Morton.

I believe this letter was sent to him on July 18th. If I remember correctly, along about July 23rd or 24th, somewhere in there, there was a meeting held in Fremont.

Q. This was a meeting between the company and union representatives?

A. Yes.

Q. What was the purpose of the meeting of the 23rd of July, 1956?

A. That was in reference to the letter sent out July 18th.

Q. And now you are talking about Defense Exhibit M?

A. Yes, sir.

Q. Who attended the meeting on July 23rd, Mr. Evans, to the best of your recollection?

A. Mr. Morton attended the meeting and myself, and I am pretty sure our attorney, Jack Gallon, attended that meeting on the 23rd.

Q. What was the purpose of the meeting?

A. To conclude agreement, to represent the people working for Mr. Morton.

Q. What position did Mr. Morton take at the meeting?

A. Well, offhand I couldn't tell you everything that went on, all the pros and cons; but I believe there was one thing that disturbed us all, that we must have or maintain 80 per cent of his customers or competitors that were working in that type of field, or the method of—well, sign the other fellow first and I will sign.

Now, there were six or eight operations similar to his in that territory. If I remember correctly, that is what came out of that meeting.

Q. Did you have any definite agreement come out of that meeting?

[fol. 360] A. No.

Q. After the meeting broke up or adjourned you then received Defense Exhibit N, the letter of July 26th?

A. That is correct.

Q. And thereafter the next thing that happened, as I recall your testimony, was a meeting about August 8th?

A. Yes, sir.

Q. Who attended that meeting?

A. The members, the employees of Lester Morton.

Q. What was done at the meeting, Mr. Evans?

A. Well, there was a—well, shall we explain the method and what happened in the meeting on the 23rd, and I believe that the proposal or the—or I believe we received over the phone or some conversation on the phone, and anyway the members brought up this point, the members present there, they said they were tired of stalling around and they wanted a working agreement, a written working agreement, and they instructed us to accomplish that, and if necessary by a strike, and that night a strike ballot was taken.

Q. I show you Defendants' Exhibit B and ask you to tell us what that is in relation to your testimony.

A. That is—or those are our strike ballots.

Q. Taken when?

A. November 8th.

Q. November 8th?

A. I mean August 8th.

Q. I show you what has been marked as Defense Exhibit O, Mr. Evans, and ask that you identify it for the purposes of the record, please.

A. That letter I can identify as received from the attorney.

Q. Received from whom?

A. Mr. Morton's attorney, Strassner.

[fol. 361] Q. And what about the document attached to it?

A. I believe on the 16th—this is a proposal, but there was no writing. That is on top here, that we received a typewritten proposal from the company, but not with this (indicating).

Q. The exhibit attached, the proposed contract enclosed with the letter, had no writing but was merely a typewritten document?

A. Yes, sir.

Q. How did the writing get on there? It was put on by the union, wasn't it, in negotiations?

A. This looks like Attorney Gallon's writing.

Mr. Hafer: We are not offering the writing on the exhibit, your Honor, because the exhibit as it was received was merely a typewritten proposal.

The Court: What then do I gather, that that accompanied a letter from the plaintiff's attorney?

Q. Is this proposed contract the one that accompanied the letter which is attached here?

A. This is without the writing, sir.

Mr. Hafer: In this connection, I would like to call the Court's attention to the fact that we are relying here only—for legal significance only on Article 11, the material part of which says:

"This agreement shall become effective when agreed by the company and union to be substantial identical to this agreement has been executed between the union and 80 per cent of the company's competitors in this type of work covered hereunder."

And that clause has no handwriting on it at all.

The Court: What is the date of the letter it accompanied?

Mr. Hafer: August 10, 1956.

By Mr. Hafer:

Q. Now, was this contract proposal discussed in the meeting of August 16th referred to in the letter?

[fol. 362] A. It was.

Q. What was the company's position and the union's position at the meeting of the 16th, Mr. Evans, as you recall it?

A. Well, this was the company's proposal and that meeting was held with the rank and file committee, negotiating committee, and the negotiating committee rejected this proposal on that day.

Q. Well, there was a meeting on the 16th, was there not, of August between the company and union representatives?

A. To the best of my knowledge, yes.

Q. What was Mr. Morton's position at that meeting?

Mr. Stauffer: If the Court please, I would like to object on the ground of materiality. The plaintiff does not deny the fact that there was a labor dispute, a seeking of a contract by the defendants, and so forth.

Mr. Hafer: I think it is of the most fundamental importance here that this Court be apprized of the real reason for the strike and how it came to pass.

We are showing or have shown the position that the plaintiff took during these negotiations. He took the position— "Well, I won't bargain with you until you get my competitors signed up."

Now, the reason for this is two-fold:

First of all, the plaintiff would hold us to a totality theory, the totality of conduct. In evaluating whether we should be held for totality of conduct I think the courts would want to know—certainly we will urge the Court that he should consider whether this was a strike affirmatively protected under the law, under federal law, or whether on the other hand it is merely a strike to get a wage increase. That is Point No. 1.

Point No. 2. It goes directly to the question of punitive damages, as the Court has previously mentioned. I pur-[fol. 363] posely did not make a motion with respect to punitive damages because I wanted to complete my proof on that issue.

The Court: I think on the latter issue I will hear it.

By Mr. Hafer:

Q. What position did Mr. Morton take at the meeting on August 16th?

A. This was their proposal.

Q. Do you recall anything specifically in the course of the oral bargaining that impressed you at that meeting?

A. No, I don't believe so, excepting this one clause that we talked about. I believe there was another one, something in there some place, if I remember correctly.

Q. Excepting which clause?

A. Article 11, where we must do certain things, to maintain certain things; for instance, get 80 per cent of his competitors and maintain 80 per cent of his competitors to have a signed agreement with him.

Q. What discussion occurred, if any, on August 16th with respect to that clause?

A. We advised that we couldn't live with—or just that we couldn't sign an agreement with that clause in it.

Q. By "that clause" you mean Article 11?

A. Article 11.

Q. What happened after the August 16th; what happened then?

A. The committee executed a strike the next morning.

Q. And that is when a strike started?

A. Correct.

Q. The very next day?

A. That's right.

Mr. Hafer: With the understanding that the writing appearing on the first two pages of Defense Exhibit O is not a part of the exhibit, we move at this time that this—we move to have the Court receive Defense Exhibit O into evidence.

[fol. 364] Mr. Stauffer: We have not yet seen the enclosure of that letter of August 10th.



Mr. Hafer: Counsel for the plaintiff has suggested that we substitute the Thermofax copy of Defendants' Exhibit O because the writing did not come through on Exhibit O, and with the leave of the Court at this time I wish to substitute for Defendants' Exhibit O a Thermofax copy thereof.

The Court: That may be done. It may be admitted.

By Mr. Hafer:

Q. How tall are you, Mr. Evans?

A. 6-11½.

Q. How much do you weigh?

A. 210 pounds.

Q. What is your age?

A. Fifty-five years.

Q. Is your weight and physical characteristics unchanged; is there any difference in your physical appearance in terms of weight or height since 1956, Mr. Evans?

A. Perhaps I am three or four pounds heavier.

Q. At any time during the Morton strike did you go to the premises of The Schoen Asphalt Paving Company?

A. No, I did not.

The Court: Did he what?

Mr. Hafer: Go to the premises of Schoen Asphalt Paving Company, your Honor.

You may cross-examine.

Cross examination.

By Mr. Stauffer:

Q. Mr. Evans, you testified on direct examination about a meeting that occurred on August 16, 1956, at which you and Plaintiff Morton and others were present, and that it was discussed there the union's request on behalf of Morton's employees for a contract.

[fol. 365]. When that meeting broke up on August 16th, 1956, had the Plaintiff Morton at any time during that meeting refused to meet again with you?

A. To the best of my knowledge, no.



Q. With regard to the Seneca County Common Pleas Court action involving this strike you were a named defendant, were you not?

A. Yes.

Mr. Hafer: Objection. Excuse me. I will withdraw the objection.

By Mr. Stauffer:

Q. Was that the first time you had been involved in any court proceeding of a similar nature?

A. You are talking about union business?

Q. Yes.

A. Yes.

Q. That was the very first time?

A. You are talking about Seneca County? You are talking about the time you went to court?

Q. Yes.

Mr. Hafer: I move that this testimony be stricken. It exceeds the scope of the direct examination.

Mr. Stauffer: This is for impeachment, if the Court please.

The Court: He may answer.

Mr. Stauffer: I think he has answered the question that that was the first proceeding.

The Court: Very well.

By Mr. Stauffer:

Q. Mr. Evans, does this name mean anything to you, F. S. Royster-Guano Company?

A. It does.

Q. Now, would you like to change your answer to the previous question?

A. In Royster I was subpoenaed as a witness. I never had any paper served on me with Royster to the best of my knowledge.

[fol. 366] Q. You were never involved in that proceeding at all?

A. Yes, I was in court on it.

Q. You were in court on it?

A. Yes; that was a long time ago.

Mr. Hafer: There is no objection if you are introducing it for impeachment purposes only, but if it is for anything else I have strenuously objected and will continue to object to it (referring to paper).

Mr. Stauffer: What is the Court's pleasure with respect to this exhibit, which is an original file copy of this court; shall we substitute a copy or—

The Court: (Interposing) I think I would abide by the decision of the Clerk there.

Mr. Livingston: We could mark this one, but I think there should be a copy provided and placed in this case so that they would not be permanently removed from the proper file.

Mr. Stauffer: We will then move the admission of Plaintiff's Exhibit 19 and ask permission to substitute a copy.

The Court: That may be done.

Mr. Hafer: Is it understood that this is being offered for impeachment purposes only?

Mr. Stauffer: That is understood.

By Mr. Stauffer:—

Q. You testified that you, among others, met with the Plaintiff Morton prior to August 16, 1956, about a union agreement, is that true?

A. I believe it was on the 23rd or 24th of July with Mr. Morton and some other people.

Q. Who were those other people, if you please?

A. I don't remember offhand. I would have to go to the record on that. They were dump truck operators.

Q. Competitors of Mr. Morton?

A. Yes.

Q. How many were there?

A. I don't remember exactly; I would say two or three.  
[fol. 367] Q. And the defendant union here called that meeting?

A. Yes.

Q. Requested it?

A. Yes.

Q. So that the defendant requested the meeting of the competitors, correct?

A. All companies.

Q. Yes.

Mr. Stauffer: That's all.

I have one further question. Pardon me.

Q. Did any of those that attended that meeting enter into an agreement with the Defendant Local 20 subsequent to that meeting and prior to November 1, 1956?

A. That I couldn't answer.

Q. To the best of your knowledge.

A. I wouldn't know because I went to other work. I didn't follow that up on the dump trucks.

Morning Session, Tuesday, May 9th, 1961, 9:30 o'clock A.M.

The Court: Call your next witness.

Thereupon, the Defense called as a witness, EDWARD SULLINGER, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

By Mr. Hafer:

Q. Will you state your name for the record as well as your business address?

A. Edward Sullenger, 435 South Hawley Street, Toledo, Ohio.

Q. What is your position?

[fol. 368] A. I am a trustee and business agent.

Q. At any time during the Morton strike, Mr. Sullenger, do you recall going to the premises of The Schoen Asphalt Paving Company in Toledo?

A. Yes, I do.

Q. Was there more than one occasion you went there?

A. Two times.

Q. On the first occasion was there any picketing out there?

A. When I went out there, no.

Q. During the time that you were at the premises did any picketing occur?

A. Yes.

Q. What did you do on this first occasion when the picketing occurred upon your arrival at the premises?

A. I went in the office and asked for Mr. James Schoen.

The Court: This was on your first visit?

A. Yes, sir.

Q. At the time you arrived at the premises was there any picketing going on?

A. No, sir.

Q. Was Mr. James Schoen present?

A. No.

Q. What happened then?

A. I asked for him and they said that he was out in the field and they called him on the car phone and he came in.

Q. About how long was it before Mr. Schoen appeared?

A. Oh, I would say 15, 20 minutes.

Q. What did you do in the meantime?

A. I was outside; I walked outside.

Q. Did you see any picketing going on?

A. Then I did.

Q. Who did you see?

A. Three pickets.

Q. Do you recall their names?

[fol. 369] A. No. There was two of them was brothers, I know that, but the other one I don't know. I don't know the names of the two brothers.

Q. Were there any other of the union's business agents there at that time?

A. Yes, just one.

Q. Who was that?

A. Mr. William Reagan.

Q. Do you know Mr. Larry Evans?

A. Yes, sir.

Q. How long have you known him?

A. Oh, I would say twenty some-odd years.

Q. Was he with you?

A. No, sir.

Q. After Mr. James Schoen arrived,—and previous testimony indicates that you had a conversation with him,—after your conversation what did you do?

A. After the conversation?

Q. Yes.

A. I went outside and explained it to the pickets what we agreed upon and we all left.

Q. Now, at any time during your visit to Schoen Asphalt on this day that the pickets were there did you see Mr. Larry Evans?

A. At no time.

Mr. Hafer: You may cross-examine.

Cross examination.

By Mr. Stauffer:

Q. With respect to your first visit to the Schoen premises there was an agreement reached there to the effect that the three Morton trucks would not be unloaded that day, is that correct?

Q. Would you answer the question, please?

A. Yes.

[fol. 370] Q. You were then acting as an agent of Teamsters Local 20?

A. Yes.

Q. In making that agreement?

A. Yes.

Q. Would you as agent of Teamsters Local 20 have been agreeable to Morton's trucks being unloaded had that agreement not been made?

Mr. Hafer: Objection. This calls for speculation. What is relevant here is what happened, what occurred.

The Court: Objection overruled. This is cross-examination.

A. I can't answer that.

Q. Why not?

A. I don't know.

Q. You don't know?

A. No.

Q. You testified on direct examination that you made at least two visits to the Schoen premises?

A. Yes.

Q. When was the first visit?

A. This time we were talking about.

Q. Well, when was it?

A. The date I couldn't answer; I don't know.

Q. What year was it?

A. 1956, I think it was.

Q. What month?

A. I don't know.

Q. It was just in 1956; you don't know when?

A. No, I don't know.

Q. How long after the first time was it that you went out there again, Mr. Sullenger?

A. I can't answer that, just exactly how many days afterward.

[fol. 371] Q. Approximately.

A. I can't answer; maybe three days, maybe two days.

Q. At least two or three days?

A. I would say so. I don't know; maybe it was one day.

Q. It could have been a week?

A. No, I don't think so; it could have been, but I don't think so.

Q. It could have been a week?

A. I don't know.

Q. You are testifying that you only went there on two occasions during the strike?

A. That's right.

Q. Who did you talk to during the second trip or visit there, Mr. Sullenger?

A. James Schoen.

Q. What did you talk about?

A. Would you repeat your question?

Q. Yes. Who did you talk to on your second trip there?

A. James Schoen.



Q. And what did you talk about?

A. About the trucks being moved out.

Q. Did you ask him why he had let the trucks be dumped?

A. I asked him why the trucks were moved out.

Q. And dumped before they were moved out?

A. I don't recall that. I asked him why the trucks were moved out.

Q. Do you recall whether you knew that the trucks had been dumped?

A. No, I don't. I can't answer that truthfully.

Q. Do you recall asking him why the trucks had been moved out when you had an agreement on the matter?

[fol. 372] A. Yes:

Q. What did he say?

A. He said he had a court order.

Q. Did he show you that court order?

A. I think he did. Yes, I know he did.

Q. And you read it?

A. Yes.

Q. I hand you Plaintiff's Exhibit 2 and ask you to look at that exhibit, Mr. Sullenger.

A. I can tell you this is it.

Q. Do you recall that you were a defendant in this action in the Common Pleas Court of Seneca County?

A. Not at that time.

Q. You were not?

A. Not until he showed me that.

Q. The question is, were you a defendant to this action in Seneca County?

A. Yes.

Q. Now, Mr. Sullenger, prior to 1956 and during the year or two previous to that were you involved in a similar proceeding of any-kind?

A. How do you mean that?

Q. You read this court order, did you not?

A. Yes.

Q. And it talked about union business agents contacting employees and employers other than the one being struck?

A. Yes.

Q. That is what it talked about?

By Mr. Stauffer:

Q. Now, you understand the nature of that court order and what it is about; you said you do, right?

A. Yes.

Q. Now, the question is, during the year or two previous to that were you involved in another action of that type? [fol. 373] A. Will you repeat what you mean? I don't know what you are talking about.

Q. I will try again. This court order refers to you as a defendant contacting the employees of other employers during a strike, does it not?

A. That's right.

Q. Now, the question is, during the year or so previous to this action were you involved in another similar proceeding?

A. Yes.

Q. What was that?

A. At LaSalle's.

Q. LaSalle's?

A. Yes.

Q. Any others?

A. No, none that I can recall.

Q. I will hand you what has been marked Plaintiff's Exhibit 20 and ask you to look at it. Also look at Exhibit "A" to that Petition. I will ask you if your name appears on it. Does it?

A. Yes, it does.

Mr. Stauffer: I will ask that Plaintiff's Exhibit 20 be introduced for purposes of impeachment, your Honor.

The Court: What is Exhibit 20? What does it purport to be?

(Thcreupon, Mr. Stauffer handed the same to the Court.)

Mr. Stauffer: For the Court's assistance, Mr. Sullenger is named on Exhibit "A" to the Petition.

The Court: You are offering it for impeachment purposes?

Mr. Stauffer: Yes, if the Court please.

The Court: In what way?

Mr. Stauffer: Well, the witness has testified that within [fol. 374] the year preceding the issuance of the court order by the Common Pleas Court for Seneca County with respect to the Morton strike this witness was not involved in any other similar activity,—

Mr. Hafer: His testimony is precisely to the contrary.

Mr. Stauffer: I haven't finished, Mr. Hafer. (Continuing)—other than the LaSalle matter, whatever that is. This shows that he was involved in another similar activity.

Mr. Hafer: It shows quite to the contrary. This is a Petition on behalf of the Regional Director against the union. This man is not a defendant in the case, and there is no hearing in the case.

The Court: Is he named in this Complaint?

Mr. Stauffer: Yes, your Honor. He is named in Exhibit "A" as one of the agents of the union that committed the unfair labor practice, allegedly, in violation of 8 (b) 4 (a), which is identical in substance with the Complaint here.

The Court: Does he deny this? Do you deny this?

A. No, but it is an NLRB case. I wasn't in no court on this. I don't remember this here.

Q. The question was broad enough to encompass this.

Mr. Hafer: Well, counsel perhaps does not know the difference between the NLRB and the courts, but the people in the labor movement know that there is quite a sharp difference, and when you ask him about a court proceeding it does not include an NLRB proceeding.

Mr. Stauffer: The word "court" was not used, Mr. Hafer.

The Court: It may be admitted.

Mr. Hafer: I want the record to show on this that there was never a hearing in the courts on this.

Mr. Stauffer: I object. This,—

The Court: (Interposing) I know nothing about that. [fol. 375] You may bring it out on redirect if you want to. It is admitted only for the purpose of impeachment of the witness.

By Mr. Stauffer:

Q. Mr. Sullenger, with regard to the second trip that you admit making to the Schoen premises what did you ask Mr. Schoen to do with respect to Morton, or what did you ask him not to do with respect to Morton from that date forward?

A. Nothing.

Q. What did you go there to talk about?

A. Them trucks was moved out.

Q. That is all you talked about?

A. Yes; and he said, "Well, I've got a court order."

Q. You asked him nothing about the future?

A. No, sir.

Mr. Stauffer: Nothing further.

Mr. Hafer: At this time we ask the Court to take judicial notice of its own file in Civil Action No. 7423, and in particular to a document entitled "Order Dismissing Proceeding for Temporary Injunction," filed on July 16, 1956, under the signature of the United States District Judge presiding in the instant case.

That order provides as follows:

"A Petition having been filed herein on September 7, 1955, for a temporary injunction enjoining and restraining respondent from engaging in certain acts and conduct set forth therein pending the final adjudication of the National Labor Relations Board with respect to such matters, and an order having been issued by the Court on September 7, 1955, requiring respondent to show cause on September 16, 1955, why such temporary injunction should not issue, and this Court having on September 16, 1955, pursuant to respondent's stipulation to refrain from said [fol. 376] acts and conduct pending the Board's final determination in the matter, and it appearing to the Court that on May 10, 1956, the National Labor Relations Board duly entered its decision and order in the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, etc., et al., and National Cement Products Co., of Toledo, Ohio (partnership) Case No. 8CC37, which

is the Board's final adjudication of the matters involved in this proceeding, and the parties having consented to an entry of this order, it is therefore ordered that this proceeding be, and the same is, hereby dismissed without cost to either party.

"Dated at Toledo, Ohio, this 16th day of July, 1956."

We ask the Court to further take judicial notice of its own file to establish the proposition that nothing in this file, which is the Court's file, indicates a hearing at which testimony was taken or witnesses were sworn or that indicates that this witness, Mr. Sullenger, or the witness, Mr. Larry Evans, were under subpoena to appear before this court in connection with the proceeding just described.

The Court: Anything further?

Mr. Hafer: Not on that point, your Honor.

Redirect examination.

By Mr. Hafer:

Q. Mr. Sullenger, what is your practice if unfair labor practices are put on your desk? What do you do with them?

A. I live up to them.

Q. The charges. Do you know what we are talking about, Mr. Sullenger, such as is attached to the exhibit here? Do you see the charge on the back of the exhibit?

A. That is put on the bulletin board in our office.

Q. Not the Petition for injunction, just the charge I am talking about.

[fol. 377] A. The first thing I do?

Q. You get Mr. Gallon, don't you?

A: I get ahold of an attorney.

Q. Then what happens after that with the charge unless Mr. Gallon tells you to do something? Do you do anything more with it after you give it to Mr. Gallon unless he tells you to do something?

A. No.

Mr. Hafer: That's all.

[fol. 430] Thereupon, the Defense called as a witness, WILLIAM REAGAN, who, having been previously duly sworn by the Clerk, testified as follows:

Direct examination.

- By Mr. Hafer:

Q. Will you state your name and business address, please?

A. William Reagan, 435 South Hawley Street, Toledo, Ohio.

Q. What is your association with Teamsters Local 20?

A. Business agent.

Q. How long have you been a business agent for the Teamsters?

A. About eight years.

Q. Eight years?

A. Yes, sir.

Q. Do you hold any other position with the union?

A. I am the Health & Welfare Director is all.

Q. Do you hold any elective position?

A. No.

Q. Do you recall during the Morton strike at any time going to the premises of The Schoen Asphalt Paving Company?

A. Yes.

Q. Will you describe the circumstances under which you went there, Mr. Reagan?

A. I took three pickets over there.

Q. Do you recall who they were?

A. Yes; Jack Combs, Joe Combs and Jim Marcum.

Q. About how long after the strike was this? After the start of the strike, I should say.

A. Oh, approximately three days.

Q. Where did you start your journey to the Schoen Asphalt Paving Company?

[fol. 431] A. At Tiffin; the place of business of Morton's in Tiffin.

Q. What did you do with these men after you arrived at the premises of Schoen Asphalt?



A. Two of the employees got out and picketed the entrance when the trucks showed up there.

Q. Which trucks showed up?

A. Lester Morton's trucks.

Q. Do you recall what the sign said?

A. That Lester Morton was on strike.

Q. Did anyone enter or leave the premises other than the Morton trucks at any time while you were picketing?

A. Yes.

Q. Who do you recall entered or left?

A. Schoen's trucks.

Q. Was Mr. Evans with you in the car?

A. No.

Q. Did you enter onto the premises of Schoen Asphalt?

A. No.

Q. About how long were you there?

A. Oh, approximately 45 minutes to an hour, I imagine.

Q. Did you see anyone come out of the office from where you were picketing, Mr. Reagan?

A. Yes.

Q. Whom did you see?

A. Lester Morton, Jim Schoen, and that's all,—oh, and Ed Sullenger.

Q. Did you see Mr. Evans around there?

A. No.

Q. How tall are you, Mr. Reagan?

A. Five-foot seven.

Q. And your weight?

A. Oh, about 210.

Q. And your age?

A. Thirty-eight.

[fol. 432] Q. Have your physical characteristics changed significantly since 1956?

A. No.

Q. Were you present at the premises of Morton Trucking Company on the first day of the strike?

A. Yes.

Q. What time did you arrive there?

A. At approximately six o'clock in the morning.

Q. What did you observe when you arrived there?

A. Well, there were approximately—oh, 20 or 25 people there by their cars, off the state highway, and over in front of the root beer stand across the street.

Q. I show you Plaintiff's Exhibit 1, Mr. Reagan, which is an aerial photo. Would you point out so that the Court can see where the truckers were when you arrived on the morning in question?

A. They was right here, here and across over in here (indicating), and across over in here, and this is where the pickets were all lined up.

Q. Where are the entrances on this photograph?

A. Here, here and back here (indicating).

Q. Were the men congregated in the area of the entrances?

A. No. There was a few picketing is all and the rest were all back alongside of the cars and over in this area here (indicating).

Q. How many men, if you can recall, were carrying signs?

A. I think there was approximately three or four.

Q. At each entrance?

A. No; just two on each one there, on the front entrances (indicating).

Q. Now, Mr. Reagan, during the first two or three hours of the,—or let's say from about six o'clock in the morning until eight o'clock in the morning on the first day [fol. 433] of the strike, were you at that time present at all times on the picket line?

A. I was.

Q. Who, if anyone, did you observe entering the premises of the Morton Trucking Company during those hours?

A. Well, there was all his garage employees, plus a few of his drivers and his bookkeeper, office employees, and a couple of his drivers.

Q. Was there any change in the method in which the picketing was conducted, say, at around eight or nine o'clock in the morning on the first day as compared with the rest of the day?

A. Yes. There was no picketing done. They just sat down in their cars or all dispersed about—before 10:30.

Q. What was done with the signs?

A. They were propped up in the bumpers of the automobiles.

Q. Now, at any time after 10 or 10:30 on the first day of the strike were there any men actually patrolling in the area of the entrance carrying signs?

A. No.

Q. What about the second day of the strike?

A. No.

Q. Or the third day of the strike?

A. No.

Q. Now, during the first day of the strike from about 10:30 on and during the second day of the strike and third day of the strike how many men were in the general vicinity of Mr. Morton's premises as you recall?

A. Well, they were assigned duties. There would be approximately four; there would be certain times they would come and certain times they would go.

Q. Now, in addition to the men on duty were there other [fol. 434] men congregated in the parking areas during the first three days there?

A. Yes. They had visitors that come there to talk with them. Most of the time they would go across the street and have a hot dog or something like that, parked in their cars, sitting in their cars.

Q. What changes, if any, occurred in the conduct on the picket line after the temporary restraining order was issued?

A. There was no change because we never had more than four pickets on there.

Q. Was there any change in the number of people who would have been standing in the area such as the root beer stand or in the parking area for the cars?

A. Yes. We told them, if they wanted to come over and visit they would have to do it out of the area on the right side of the road, or from where the place of business was they would have to visit across the street.

Q. This is after the order?

A. What is that?

Q. This was after the order?

Q. As far as you know were those instructions followed?

A. Yes, sir.

Q. How much time did you spend on the picket line during the strike, Mr. Reagan?

A. Oh, almost all my time was on the strike.

Q. Did any of the drivers return to work who originally supported the strike?

A. Yes.

Q. About how many?

A. Oh, about ten.

Q. This was during the entire course of the strike that some of the men went back?

A. Yes, approximately ten or fifteen.

[fol. 435] Q. Were any new drivers hired during the strike?

A. Yes, there were.

Q. Do you know how many?

A. No, I don't.

Q. Do you have any idea—one, two, ten.

A. Oh, there was at least ten.

#### COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Hafer: Your Honor, at the lunch hour I asked the Clerk to call to your attention a citation and called it to the attention of plaintiff's counsel at that time.

The Court: Is that the Ford Motor case?

Mr. Hafer: Yes. What I had in mind obviously was the question of our Amended Answer.

It seems to me that the equities of our position are stronger than they were in that case. There there was a complete trial and a verdict in favor of the plaintiff which was set aside on technical grounds and a second trial, and about four months before the second trial the defendant for the first time advised plaintiff of its wish to add a new defense and was unable to persuade the plaintiff to agree and about two weeks before the second trial filed a motion to permit the Amended Answer which raised a new legal defense.

This was denied by the Trial Court. On appeal to the Sixth Circuit it was held that an amendment should have been permitted, and that it even constituted an abuse of discretion.

Now, here we have a memorandum and I have had an opportunity to examine it before—or I didn't, before—the memorandum submitted by Mr. Gallon and Mr. Stauffer at the time of the motion to dismiss and both argue at length the question of res judicata as though it were properly pleaded. Frankly, I am satisfied in my own mind that it was not properly pleaded at that posture; but that was [fol. 436] not argued by Mr. Stauffer and Mr. Gallon assumed that it was.

In the circumstances, your Honor, what we are asking leave to do is to introduce the documentary evidence in support of it, which consists only of the Petition in the State Court, the motion to dismiss, and the journal entry of the State Court.

I think that under the Sixth Circuit case we called your attention to, we should be permitted to amend our Answer so that there is no waiver of the res judicata.

The Court: What would you insert in that Answer? What is the new matter? Have you submitted a copy of your proposed amendment to counsel?

Mr. Hafer: I did that on the first day of the trial. I served the original and left a copy with him. The original we did not leave with the Court at that time because the amendment was not allowed to be introduced. It is set forth in Paragraph 13, your Honor, of the Answer, which I am handing to you.

The Court: Mr. Clerk, would you go through this file and see if you can find the Answer that was filed to the original Complaint? I don't seem to be able to locate it.

The Clerk: I know there is an Answer, but—

The Court: (Interposing) The Answer was filed to the Amended Complaint, but there was no Answer filed to the Second Amended Complaint. I think there was a second Amended Complaint.

Mr. Gallon: There is only one Answer.

The Court: That's right. At the Pretrial Conference it was agreed that the Answer filed to the Amended Complaint would be considered the Answer to the Second Amended Complaint. Now you have added Paragraph 13 in your proposed Answer to the Second Amended Complaint.

[fol. 437] Mr. Hafer: Yes, your Honor.

The Court: What is the position of the plaintiff?

Mr. Stauffer: First of all, that this has been ruled upon in this action on the first day of trial, correctly, we believe, and with respect to the position that we took at the time we opposed the defense motion to dismiss, we were at that time addressing ourselves to the motion to dismiss and certainly were not conceding anything about the pleading of the defense, their Answer.

I am not certain at the moment whether subsequent to that time the defendants filed their Amended Answer—that is, an Answer to the Amended Complaint—or whether it was before that, but, in any event, the defendants moved to dismiss this action upon this very ground, the State Court procedure, and that question has been ruled upon twice now in the proceedings to dismiss as a result of the motion filed by the defendants and then again at the inception of this trial. So that we have not changed our position in that regard.

Mr. Hafer: If the plaintiff takes the position that the Court has ruled on it, that is perfectly agreeable to me, but if so, then it makes it perfectly obvious that we are entitled to have the pleading amended so that the record can show what the Court based its decision on so that we can urge the Court or a reviewing court with respect to the correctness of the ruling. If this issue is already so far in the case as to have received a ruling by this Court, then I think unquestionably under Rule 15 we are entitled to amend our pleading. In that circumstance it has been tried by consent and there is a waiver by plaintiff under Rule 15.

Mr. Stauffer: I don't quite understand that. I understood the ruling of the Court to be that the Answer could not be amended. I believe that was the ruling on the first day of this trial.

[fol. 438] The Court: I don't have a direct recollection of what occurred in that regard on the first day of the trial. I do recollect that when the motion to dismiss was filed I believe that motion encompassed a question that you are now seeking to raise by way of the amended answer.



Mr. Hafer: If that is the Court's understanding, and if the Court's ruling, which was a summary ruling; it was not an opinion, was intended by the Court to deny the motion because it found no legal merit in it, then I think it quite clear that under Rule 15 we are entitled to amend our Answer so that we can put in the brief documentary evidence on the point.

The Court: I don't see, Mr. Hafer, that this move at this time has any bearing upon the decision of Judge Miller in the Ford case that you referred to. That was an entirely different situation.

In the Ford case two weeks before trial the plaintiff asked leave to amend his Complaint in connection with a matter that certainly would not have disturbed the existing pleadings and would not have required a vacation of the assignment.

Here we have had this question raised on motion to dismiss, perhaps—I don't know, it may have been a year ago, but certainly it was a great many months ago. The question was briefed by both parties and the Court decided the motion. Then a pretrial was had—I think the second pretrial—and at that pretrial it was agreed that the Answer to the Second Amended Complaint would be the Answer—that the Answer to the Amended Complaint would be the Answer to the Second Amended Complaint. The Court was not apprized of any desire to amend the pleading until the first day of the trial here, if that is correct. I have no recollection of it at this time.

Mr. Hafer: That is correct, your Honor.

The Court: I do recollect that, I believe at the time the motion to dismiss was considered by this Court that this [fol. 439] order of the Court that is contained now in Paragraph 13 was before the Court in some fashion because I have read it before. It is familiar to me. The motion, as I recall, was denied generally.

Would this in any way disrupt the plaintiff by permitting such an amendment by defendants at this time?

Mr. Stauffer: If the Court please, the plaintiff has understood for many months that this issue was entirely out of the case. We were surprised on the first day when the request was renewed to obtain permission to file an Amended Answer.

It is my understanding that the Court ruled against the amendment of the answer on the first of this trial. We are surprised that the question is raised again now. I don't know what might follow from that.

The Court: In the Ford Motor case Paragraph 5 of the syllabus:

"Where original complaint alleged that manufacturer's purported termination of sales agreement had not been made in good faith, the tendered amendment alleging additionally that manufacturer had lacked good faith in the execution of the agreement did not allege a new cause of action barred by the statute of limitations."

Paragraph 4:

"Even though amendment tendered approximately two weeks before trial presented another issue, namely, lack of good faith in execution of the agreement whereas the original complaint in the dealer's suit against manufacturer for damages resulting from cancellation of agreement had merely alleged that termination of the agreement had not been in good faith it did not change in any material way the evidence which would be offered by the plaintiff, and therefore the Trial Judge should have permitted amendment to be filed."

Here, by virtue of the proposed amended pleading, you [fol. 440] are raising a question at the conclusion of the trial, virtually, that has not entered into the trial during the trial.

The question that was argued pro and con in a motion to dismiss quite some months ago was disposed of by the Court. I don't know why you should be permitted now to file an amended pleading setting up this affirmative defense. Hadn't you thought of that before?

Mr. Hafer: Yes, your Honor, counsel had thought of it before, because Mr. Gallon raised it in his brief attached to his motion to dismiss.

Mr. Gallon was under the impression that he was not required, in order to preserve the issue in the case, to keep it as part of the record on appeal, should there be an appeal, to do anything other than add in the record the denial of the motion.

In my judgment, as associate counsel—and we were called in at a very late date—I differed with Mr. Gallon in that respect and I advised him that in my judgment it was necessary to have the matter properly—or affirmatively pleaded in order to preserve the issue properly in the record, and upon that advice when I first talked with Mr. Gallon two days before the trial I immediately proceeded to prepare an Amended Answer, which we presented immediately at the opening of this trial, and that is a full and complete disclosure of why there was no earlier pleading:

The Court: I don't believe I will permit it at this time in view of the fact that the question was debated by both sides and argued to the Court at the time of the motion to dismiss. I don't believe that it would be quite in order to raise that question again.

Mr. Hafer: Mr. Gallon, please.

The Court: I may say to counsel that the motion to dismiss was filed on July 14, 1959, almost a year ago, and [fol. 441] after the briefs were filed the Court very promptly determined the motion.

You may proceed.

Mr. Hafer: Thank you.

Thereupon the Defense called as a witness Mr. JACK GALLON, who, having been previously duly sworn by the Clerk, testified as follows:

#### Direct examination.

By Mr. Hafer:

Q. Will you state your name and occupation, please?

A. My name is Jack Gallon and I am an attorney.

Q. You are an associate with me, are you not, as co-counsel in this case?

A. Yes, I am.

Q. Did you have any dealings in connection with the Morton negotiations before and during the strike?

A. Yes, I did.

Q. I show you what has been marked Defendant's Exhibit Q and ask you to identify it for the record, please.

A. This is a file copy of a letter which I dictated to my secretary, the original of which was mailed to Mr. Lester Morton. The original was signed by myself.

The Court: What is the date of it?

A. This document is dated July 19, 1956.

Q. It refers to a meeting to be held on Monday, July 23rd. Was that meeting held to your recollection?

A. Yes, it was.

Mr. Hafer: This, like the other exhibits, your Honor, is in connection with the negotiations and is for the purpose of filling out the record.

We move the admission of Defense Exhibit Q.

[Vol. 442] Mr. Stauffer: No objection.

The Court: It will be admitted.

Mr. Hafer: This is Defense Exhibit R (handing same to Mr. Stauffer and Mr. Py).

By Mr. Hafer:

Q. I show you what has been marked as Defense Exhibit R and ask you to identify it for us, please.

A. This is a document which I received in the mail some time shortly after August 30, 1956. It is a carbon copy of a letter which has been addressed to the Honorable Robert J. Vetter, Judge of the Huron County Common Pleas Court. It is not signed and it has typed in that it was written by M. J. Stauffer and is a—or there is a personal note on the letter to me, with the initials typed in of "MJS."

Q. At the time during the strike there was pending in the state court certain litigation, was there not?

A. Yes.

Q. What was the nature of that litigation?

A. The plaintiff in this cause of action, Lester Morton, was also a plaintiff in an injunctive type proceeding in the state court. He had filed a Petition and an application for an injunction.

Q. I show you Plaintiff's Exhibit 2. Was this the injunction you are talking about?

A. Yes. This is a copy of the order, or journal entry, which was granted ex parte by the Judge of the Common Pleas Court of Seneca County.

Q. After the issuance of the ex parte order, Mr. Gallon, were any hearings held in the state court for further injunctive relief?

A. Yes. Some time within I believe a week after the issuance of this ex parte order, pursuant to a motion filed by myself on behalf of defendants in that action, a hearing was to be held in regard to the motion to vacate the injunction.

[fol. 44?] About the same time the attorney for the plaintiff had filed a motion for temporary injunction as well as, I believe, a citation for contempt and there was to be a hearing had primarily on those matters, I think.

Q. Was a hearing ever held?

A. It was begun, testimony was taken, but some time during the testimony at the judge's suggestion; I believe—and this was a different judge who had granted the order, the ex parte order—the hearing was recessed for the parties to negotiate a settlement of their differences, if possible.

Q. Was there ever a ruling based on the evidence by any of the state judges with respect to the matters in the complaint or petition for temporary injunction?

A. There never was.

Q. This letter, Exhibit R, relates to the state court litigation that we have just been discussing, is that correct?

A. Yes. My recollection is that Judge Vetter, who was the trial judge, requested both attorneys, namely, myself for the defendants, and Melvin Stauffer for the plaintiff, to keep him advised as to the negotiations, and I understood this Defense Exhibit B to be a copy for me of the document which was sent to Judge Vetter informing him of the progress.

Q. Defense Exhibit R is—

Mr. Hafer: Defendants' Exhibit R, your Honor, as such contains a statement that will speak for itself, but in any event indicating that plaintiff is most interested in getting his competitors organized, and we are introducing

Exhibit R primarily in connection with the punitive damages and our contention that this was a protective strike.

At this time we move that Defense Exhibit R be received into evidence.

The Court: Without objection it will be admitted.  
[fol. 444] Mr. Stauffer: No objection.

By Mr. Hafer:

Q. I show you what has been marked Defense Exhibit S and ask you to identify it for the purposes of the record, please.

A. This is a carbon copy of a letter bearing a date of September 8, 1956, which I recall receiving some time shortly thereafter and which is addressed to the Honorable Robert J. Vetter, the same judge I referred to a moment ago, who was the trial judge in the state court proceedings. It is signed by M. J. Stauffer, or at least his name is typed here, and there is a personal message to me also which bears the first name "Mel," which appears to be his first name; and again, like the last exhibit, it is a letter to the judge telling him of the progress of the negotiations.

Mr. Hafer: We move the acceptance of Defense Exhibit S into evidence.

The Court: Without objection it will be admitted.

Mr. Hafer: I don't have a second copy of this one, your Honor. So I will first show the copy here to counsel for the plaintiff. (Handing the same to Messrs. Stauffer and Py.)

By Mr. Hafer:

Q. I show you what has been marked as Defense Exhibit T and ask you to identify it for the record, please.

A. The first sheet of the exhibit is a photographic or photostatic copy of a letter which I received in the mail some time shortly after September 12, 1956, which notes that a proposal from The Lester Morton Trucking Company in regard to collective bargaining with Local 20 is enclosed, and the letter is signed by Mr. Stauffer, the attorney for Morton at that time.



The pages which follow, which are legal sized pages, are a photostatic copy of the enclosure which was in this letter dated September 12, 1956, to the best of my recollection, which contains the items still remaining in dispute in regard to negotiations as well as items which have been agreed upon, identifying items as being company proposals or being tentatively approved.

Q. For the convenience of the record, would you read from Defense Exhibit T, the proposed Article 11 contained therein?

A. Yes. (Reading): Section One of Article 11, which is entitled "Effective Date," reads: "This agreement shall become effective when and remain effective so long as agreements agreed by the company and the union be substantially identical to this agreement have been executed between the union and 80 per cent of the following of the company's competitors and the type of work covered hereunder who own and operate three or more trucks in Erie, Huron, Sandusky, Seneca and Ottawa Counties, Ohio." \* \* \*

And on the margin of that it is marked "C. P.", which the letter indicates is "company proposal," and then Section Two of that Article continues:

"This agreement shall continue in full force and effect for three years from and after the effective date hereof unless it lapses as provided in Section One above."

By Mr. Hafer:

Q: Thank you.

Mr. Hafer: We move the admission of Exhibit T.

The Court: Without objection it will be admitted.

Mr. Hafer: At this time we ask the Court for leave under Rule 43 (c) to make a record of excluded evidence on res judicata, and I think for purposes of convenience and expedition if I simply go through my exhibits and have Mr. Gallon identify them, with the continuing objection for the plaintiff, we would then offer the evidence and have them accepted as a part of the excluded evidence of the case under Rule 43 (c). It can be done in a very few moments.

The Court: Very well.

[fol. 446] Mr. Hafer: Let the record show that the Defendants' Exhibit U and the balance of the exhibits which I propose to offer through this witness relate to the issue of res judicata and are being submitted pursuant to my motion for a record of excluded evidence under Rule 43 (c).

By Mr. Hafer:

Q. I show you what has been marked Defendants' Exhibit U and ask you to identify it for the record, please.

A. This is a copy of a motion to dismiss which was filed on behalf of the defendant in this cause of action in this court, the original of which I believe has been filed with the Clerk.

Mr. Hafer: We move that Defense Exhibit U be received as part of our 43 (c) record.

Mr. Stauffer: We object for the record.

The Court: You are offering that by way of an offer to prove?

Mr. Hafer: It amounts to the same thing. As I understand Rule 43 (c) we must ask the leave of the Court to make a record in full of the excluded evidence, that is, this entire document. The only way we can physically get it into the record is ask leave of the Court to make a full record of excluded evidence, denominating it as such. That is what I am asking leave of this Court to do.

The Court: What is the document that you have there in your hand?

Mr. Hafer: This is a memorandum, your Honor, which was attached to and issued in support of the preceding Exhibit U.

The Court: The motion to dismiss?

Mr. Hafer: Yes.

The Court: Very well.

Mr. Stauffer: We have a continuing objection to all of this, of course.

The Court: All right.

[fol. 447] By Mr. Hafer:

Q. I show you what has been marked as Defense Exhibit V and ask you to identify it for the record, please.

A. This is a copy, a true copy, to the best of my recollection, of the memorandum which was filed in support of the motion to dismiss, which was the last exhibit, Exhibit U, and which was identified in this cause of action in this court.

Q. That was submitted in support of the motion to dismiss in this court, was it not?

A. Yes.

Mr. Hafer: We move that Exhibit V be accepted as a part of our record under Rule 43 (c).

The Court: Very well.

Q. I show you what has been as Defense Exhibit W and ask you to identify it for the record, please.

A. Yes. This was a memorandum in opposition to the motion to dismiss which I received from attorneys for the plaintiff in this proceeding pursuant to the motion which I filed which was Exhibit U and in answer to or in opposition of my memorandum and motion which I just identified as Exhibit V.

Mr. Hafer: We move that Defense Exhibit W be accepted on the same basis as the foregoing exhibits.

The Court: It may be admitted.

By Mr. Hafer:

Q. I show you what has been marked as Defense Exhibit X and ask you to identify it, please.

A. This exhibit is a copy of the motion to dismiss reply memorandum which was filed by myself on behalf of the defendants in this cause of action in this court in answer to the or in reply to the answer memorandum, all of which I just identified and all relating to the same motion to dismiss which I also earlier identified.

Mr. Hafer: I move that Defendant's Exhibit X be admitted.

[fol. 448] The Court: It may be admitted.

Mr. Hafer: I show counsel for the plaintiff what has been marked Defendant's Exhibit Y. I do not have an extra copy of it since it is his Petition filed in the state court. I am sure he has a copy of it in his file.

Q. I show you what has been marked Exhibit Y, Mr. Gallon, and ask you to tell us what it is, please.

A. This is a certified copy of a Petition filed in the State of Ohio, Court of Common Pleas of Seneca County, with Lester Morton, d/b/a Lester Morton Trucking Company as the Plaintiff, and suing Local 20 of the Teamsters as well as other named defendants, containing a first cause of action and a second cause of action.

Q. The damage Petition, isn't it?

A. Yes.

Mr. Hafer: I move that it be made a part of our record of excluded evidence.

The Court: It may be admitted.

Q. I show you what has been marked as Defendant's Exhibit Z and ask you to identify it for the record, please.

A. This is a certified copy of a motion to dismiss, the original of which—or which this was copied from, was filed on September 26, 1958, (sic), in the Common Pleas Court of Seneca County, Ohio, in the same cause of action which I just viewed the Petition of, which I believed was Defendant's Exhibit Y.

Q. That was the damage case?

A. Yes.

Mr. Hafer: We move that the Defendant's Exhibit Z be accepted in evidence.

The Court: It may be admitted.

Q. I show you what has been marked Defendant's Exhibit AA and ask you if you can identify it for the record, please.

A. This is certified copy of a journal entry of the Com-[fol. 449] mon Pleas Court of Seneca County, which dismissed the state court damage action about which I have just testified.

Mr. Hafer: I move that Defendant's Exhibit AA be accepted into evidence.

The Court: It may be admitted.

Q. I show you the file document, which has been marked Defendant's Exhibit BB, Mr. Gallon, and I believe that is the proposed Answer which we offered at the beginning of the trial and which we asked leave to file again a few minutes ago, is it not?

A. Yes, it is.

Mr. Hafer: I will ask that that be included and admitted as our last document of excluded evidence, your Honor.

The Court: It may be admitted.

Mr. Hafer: You may cross-examine.

• • • • •  
Cross examination.

By Mr. Stauffer:

Q. Mr. Gallon, I will hand you Plaintiff's Exhibit 21 and ask you what it is.

A. This is a copy of a motion which I filed on behalf of the defendants in the injunction action in Seneca County and about which I testified earlier that I filed a motion to vacate this, described as to dismiss the restraining order shortly after it had been granted.

Q. On what date did you dictate that motion?

A. It appears on the top. I have no recollection of when I did it except that there are some remarks at the top which presumably were put in by a secretary and which shows that it was dictated on 8/22/56.

Q. About when was this filed with the Common Pleas Court of Seneca County?

A. I don't recall at this time.

Q. I will hand you Plaintiff's Exhibit 22, Mr. Gallon, and ask you if that is not a certified copy of the docket of the [fol. 450] Seneca County Common Pleas Court with respect filings of pleadings in the injunction action pertaining to the Morton strike.

A. It purports to be a certified copy of the Seneca County Common Pleas Court appearance and execution docket.

Q. In what case?

A. Case No. 29,500, and it is Lester Morton, d/b/a Lester Morton Trucking Company versus Local 20, Teamsters and other parties.

Q. And does that show a motion filed on August 24, 1956?

A. It says, "Motion & Notice of Hearing Filed."

Q. On what date?

A. August 24th.

Q. Was your motion granted by the Court, Mr. Gallon?

A. To my knowledge, the motion was never granted.

Q. Has the restraining order ever been dissolved?

A. To my knowledge, yes, it was dissolved.

Q. Would you examine the docket and see if it relates when it was dissolved?

A. The only entry that I would have reference to would be October 13, 1956, and it says, "Temporary Restraining Order Dissolved."

Q. And that was after the strike had concluded, was it not?

A. Yes, it was after a collective bargaining agreement had been entered into.

Q. So that this order remained in effect through the strike?

A. Yes, to my knowledge.

Q. Now, at any time and with respect to the strike did the Defendant, Teamsters Local 20, file a charge with the National Labor Relations Board against the plaintiff in this action?

A. Not to my knowledge.

[fol. 451] Q. And you were the attorney for the defendant throughout that period?

A. That's right.

Mr. Stauffer: Nothing further of this witness.

Mr. Hafer: I have nothing further, your Honor.



[fol. 455]

## REBUTTAL EVIDENCE

Thereupon, the Plaintiff, Mr. LESTER MORTON, was himself recalled as a witness in rebuttal and, having been previously duly sworn by the Clerk, testified further as follows:

Direct examination.

By Mr. Stauffer:

Q. Mr. Morton, you have heard the testimony here to the effect that two of the proposed union agreements submitted on your behalf contained clauses to the effect that such agreements would not become effective until certain of your competitors signed similar agreements.

A. Yes.

Q. Why were those clauses in those proposals?

A. Well, before the strike Larry Evans had told me that he had most of my competitors under contract and I asked him to tell me who they were and he refused to tell me, [fol. 456] and in the proposal I think I asked my—I know I asked my attorney to put that in the proposal to see if Larry Evans is telling the truth, and if he had agreed to having that in the contract then he would be telling me the truth.

Q. When you met with the Defendant Teamster Local 20 on August 16, 1956, state whether you expected to meet again about a union contract.

A. That is on the 16th?

Q. Yes.

A. Yes, we did.

Q. State whether you ever refused to meet again with the defendant to negotiate for a contract?

A. No, I did not.

Mr. Stauffer: I would like to move the admission of Plaintiff's Exhibits 21 and 22, those being the state court motion to dismiss the injunctive proceeding and the docket of the state court.

The Court: They will be admitted.

Mr. Stauffer: That's all I have.

Cross examination.

By Mr. Hafer:

Q. Didn't you know, Mr. Morton, that there was going to be a strike on the 17th, or at the conclusion of the meeting on the 16th that there was going to be a strike the next day?

A. That is what they said.

Q. The strike then came as no surprise on the 17th when it occurred?

A. Well, I don't know. It's what they said.

Q. You knew, though, that the union on the 16th—you knew the union was going to go out on strike, didn't you?

A. That's what they told me, yes.

[fol. 457] Q. And you had meetings after the strike started, didn't you?

A. Yes, sir.

Q. And you continued to make contract proposals, continued to state orally that you wanted a clause protecting you from your competitors, didn't you?

A. That's because Larry Evans said that he had a contract with most of my competitors, that's right.

Mr. Hafer: May I have Defense Exhibit E?

(Thereupon, the Clerk produced the said exhibit.)

Q. Do you remember when you were on the stand the last time, Mr. Morton? Do you remember that? Do you,—

A. (Interposing) I remember being on the other,—

Q. (Continuing) —Do you remember when you were on the stand a week ago?

A. Yes; I remember.

Q. Do you remember that I showed you a letter written to your employees?

A. Yes, and you showed me the letter.

Q. You remember that you had to read it twice?

A. Yes, that's right.

Q. I want you to look at that letter again, and I want you to read in open court the first two sentences of the last paragraph of that letter, Mr. Morton.

A. The last,—

Q. (Interposing) The first two sentences of the last paragraph,—or the second paragraph, rather.

I want you to read it so that the Court can hear what is in there.

A. (Reading): "In the meantime I expect to conduct my business under the protection of the Court order and so long as the few remaining jobs remain any former employees who are now on strike will be considered for these jobs. In short, my willingness to sign a contract has and will not be affected by this strike."

[fol. 458] Q. And what comes next? Well, you read the last two. Let me read them for you. You read along with me.

The first two sentences of the second paragraph read as follows (Reading):

"I met with the union again on August 29th and discussed contract terms with its representatives. We were able to agree on several points, but the union has not as yet—has not indicated its willingness to agree that I will not be bound until most of my competitors are.

I simply cannot afford to agree to a contract without a provision that will protect me in this regard." Now, did I read it correctly, Mr. Morton?

A. I can't see too good there. I am too far away.

Q. You read it over and tell me if I read it correctly, Mr. Morton.

A. I guess you did.

Q. And this is the letter you sent to your employees telling them what your position in the strike was, isn't it?

A. Partly.

Q. Well, what else is it, Mr. Morton, if it is only partly that?

A. Mr. Evans can't produce to me any contracts yet that he had with my competitors.

Q. Where in that letter,—you show me,—where in that letter does it say I am insisting on this clause because I

want to see if Mr. Evans is a truthful man; you show me in the letter where it says that.

A. I can't see anything in the letter.

Q. Nothing in there, is there, Mr. Morton?

A. [No response.]

Mr. Hafer: That's all. I have nothing further.

The Court: Anything further?

Mr. Stauffer: Yes, your Honor.

[fol. 459]                      Redirect examination.

By Mr. Stauffer:

Q. In this letter Defendants' Exhibit E, Mr. Morton, you stated that you could not afford to sign a contract unless your competitors had done so, is that correct?

A. Yes, sir.

Q. What did you mean by that?

Mr. Hafer: Objections. It speaks for itself.

The Court: I think that would speak for itself.

A. I meant that I couldn't afford,—

Mr. Hafer: (Interposing) Just a minute.

The Court: The objection is sustained.

Q. And you did sign a contract with the defendant in the early part of October of 1956, did you not?

A. Yes, sir.

Q. Did that contract have a clause in it about your competitors signing contracts?

A. No, it did not.

Mr. Stauffer: I think that's all.

Mr. Hafer: We have no further cross-examination of the witness, your Honor.

[fol. 460]

## PLAINTIFF'S EXHIBIT 2

In the Common Pleas Court of Seneca County, Ohio  
No. 29,500

LESTER MORTON, d/b/a Lester Morton Trucking Co.,  
Plaintiff,

v.

LOCAL 20, TEAMSTERS, etc., et al., Defendants.

Upon filing of the petition herein, notice thereof being dispensed with, the Restraining Order as prayed for in the petition is hereby granted upon giving of bond in the amount of Three Thousand Dollars (\$3,000.00) to be deposited with the Clerk of this Court, restraining the individual defendants and each : ' all of them, and all persons, associated with or acting in concert with said defendants and all others to whom knowledge of this order shall come:

[fol. 461] 1. From all acts of violence, force, intimidation or threats directed toward plaintiff, his agents, employees, representatives, customers and others having business with plaintiff.

2. From interfering with, or by violence, force, intimidation or threats, preventing or attempting to prevent plaintiff, his agents, employees, representatives, customers and others having business with the plaintiff, from entering or leaving plaintiff's place of business and from in any way interfering with, obstructing, delaying or stopping plaintiff's lawful operation of his business or maintenance of his equipment.

3. From, whether by secondary boycotts or otherwise, interfering with, or by violence, force, intimidation or threats, preventing or attempting to prevent any of plain-

tiff's customers or any other members of the public from having business relations with the plaintiff.

4. From following plaintiff's agents, employees and representatives on the public highways or elsewhere.

5. From using profane, obscene or abusive language directed toward plaintiff, his agents, employees and representatives, or toward the public.

6. From picketing, other than peaceably and by more than two pickets at each entrance, the plaintiff's place of business or any part thereof.

7. From interfering with the ingress or to egress from said place of business by trucks or conveyances of any kind.

8. From protecting, aiding, abetting or assisting anyone in the commission of any of said acts hereinabove mentioned.

RALPH SUGRUE,  
Judge.

Served 8/24/56..

[Certificate omitted.]



[fol. 471]

## PLAINTIFF'S EXHIBIT 14

Lost Rental Revenue  
O'Connell Work  
Lester W. Morton

	Units	Value	
Total available .....	10,782.2 T	\$ 7,489.52	
Morton hauled .....	3,610.35 T	2,882.44	
Lost .....	7,171.85 T	<u>\$ 4,607.08</u>	\$ 4,607.08
Rate per ton (average approx.)....	65¢		
Tons per load.....	13		
No. of truckloads.....	552		
Mileage in average haul—round trip	37 mi		
Total mileage lost.....	20,424		
Gasoline cost			
Average mileage per gallon.....	5 mi		
No. of gallons.....	4,085		
Cost per gallon.....	22.2¢		
Total gasoline cost.....	\$ 906.87		\$ 906.87
Oil cost			
No. of quarts per 100 miles.....	1		
" " " lost mileage .....	204.24		
Cost of oil per quart.....	20¢		
Total cost of oil.....	40.85		40.85
Labor costs			
Average hours per trip.....	1½		
Total hours .....	738 Hrs.		
Rate per hour.....	\$ 1.50		
Total labor cost.....	1,104.00		1,104.00
			<u>\$ 2,051.72</u>
Loss after deduction of gasoline, oil and labor cost.....			\$ 2,555.56
Amendment to Correct Labor Cost			
Correct rate \$1.60 per hour			
Additional cost of 10¢ per hour.....			73.69
Loss after deduction of gasoline, oil and labor cost— amended .....			<u>\$ 2,481.76</u>

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## PLAINTIFF'S EXHIBIT 15

Lost Rental Revenue  
Seneca County Contract  
Lester W. Morton

	Units	Value	
Amount lost per testimony.....	5,758.60 T	\$ 3,778.53	\$ 3,778.53
Average rate per ton—price.....	65.6¢		
Average weight per truckload.....	13 T		
Number of truckloads.....	443		
Mileage per round trip—average.....	14 mi		
Total mileage lost.....	6,202 mi		
Gasoline cost			
Average mileage per gallon.....	5 mi		
No. of gallons to be used.....	1,240		
Cost per gallon.....	22.2¢		
Total gasoline cost.....	\$ 275.28		\$ 275.28
Oil cost			
Number of quarts per 100 miles..	1		
" " " lost mileage.....	62		
Cost of oil per quart.....	20¢		
Total cost of oil.....	\$ 12.40		12.40
Labor cost			
Hours spent per truckload—aver-			
age.....	.75		
Total hours.....	332.25		
Rate per hour.....	\$ 1.50		
Total labor cost.....	\$ 498.38		498.38
			<u>\$ 786.06</u>
Loss after deduction of gasoline, oil & labor cost.....			<u>\$ 2,992.47</u>
Amendment to correct Labor Cost			
Correct labor cost \$1.60 per hour.....			33.23
Additional labor cost, of 10¢ per hour.....			
Loss after deduction of gasoline, oil & labor cost—			
amended.....			\$ 3,025.70
			<u>66.46</u>
			<u><u>\$ 2,959.24</u></u>

[fol. 473]

## PLAINTIFF'S EXHIBIT 16

Lost Rental Revenue—Amended (Notes A & B)  
 Wilson Sand & Gravel Company (Holderman)  
 Lester W. Morton

	Units	Value	
Total tonnage hauled on entire contract (A) .....	32,991.85 T		
Less—Tonnage hauled before 8/17/56.....	14,173.70 T		
Hauled by Morton on 8/22 & 8/23/56 .....	86.95	14,260.65	
Tonnage available to Morton .....	18,731.20 T	\$30,604.32	\$20,604.32
Rate per ton.....	\$ 1.10		
Average weight per truckload.....	17 T		
Number of truckloads.....	1,102		
Mileage in average round trip.....	65		
Total mileage lost.....	71,630		
Gasoline cost			
Average mileage per gallon.....	5		
Number of gallons usable.....	14,326		
Cost per gallon.....	22.2¢		
Total gasoline cost.....	\$ 3,180.37		\$ 3,180.37
Oil cost			
Number of quarts per 100 miles.....	1		
Number of quarts for lost mileage.....	716		
Cost of oil per quart.....	20¢		
Total cost of oil.....	\$ 143.20		143.20
Labor cost			
Hours per truck load—average.....	2.5		
Total hours.....	2,755		
Rate per hour (B).....	\$ 1.60		
Total labor cost.....	\$ 4,408.00		\$ 4,408.00
			\$ 7,731.57
Loss after deduction of gasoline, oil & labor cost—amended .....			\$12,872.75

Note A—Amended to reflect tonnage hauled per Wilson Sand & Gravel Company records.

Note B—Amended to reflect correct rate per labor hour of \$1.60.

[fol. 474]

## PLAINTIFF'S EXHIBIT 17

**Lost Rental Revenue  
Lauder & Son Contract  
Lester W. Morton**

	Units	Value
Total contract—batches (B).....	29,574 (B)	\$22,180.50
At batch rate.....	4,720 (A)	
Actually hauled at hourly rate .....	312	5,032 (B) 3,774.00
Lost .....	24,542	<u>\$18,406.50</u> <u>\$18,406.50</u>
Rate per batch.....	75¢	
Number of batches per truckload.....	3	
Total number of truckloads.....	8,181	
Mileage in average haul—round trip .....	2.6 mi	
Total mileage lost.....	20,452.5	
<b>Gasoline cost</b>		
Mileage per gallon of gas.....	3	
Cost of gasoline per gallon.....	23.2¢	
Number of gallons of gasoline... ..	6,817.5	
Cost of gasoline for lost mileage. \$	1,513.49	\$ 1,513.49
<b>Oil used on lost mileage</b>		
Number of quarts per 100 miles ..	1	
" " " lost mileage... ..	204.53	
Cost of oil per quart.....	20¢	
Total cost of oil.....\$	40.91	40.91
<b>Labor cost on lost rentals</b>		
Loads hauled per hour.....	3	
Total hours .....	2,727	
Rate per hour.....\$	2.20	
Total labor cost.....\$	5,999.40	5,999.40
		<u>\$ 7,553.80</u>
Loss after deduction of gasoline, oil and labor cost.....		\$10,852.70
<b>Amendment to Correct Labor Cost</b>		
Correct rate \$2.35 per hour .....		
Additional cost of 15¢ per hour .....		409.05
Loss after deduction of gasoline, oil and labor cost—amended .....		<u>\$10,443.65</u>

(A) Testimony of Lauder &amp; Son, Inc.

**Lost Rental Revenue  
Additional Expenses Chargeable and Summary  
Lester W. Morton**

[fol. 475]

	Lauder & Son	O'Connell	Seneca County	Wilson Sand & Gravel	Total
Loss After Deduction of Gasoline, Oil and Labor Cost—Amended .....	\$10,443.65	\$ 2,481.76	\$ 3,025.70	\$12,871.75	\$28,823.86
<b>Additional Chargeable Costs</b>					
Pay roll taxes and workmen's compensation:					
Workmen's comp. ....	2.76%				
Social Security .....	2.00				
Unemployment—Ohio .....	2.00				
Federal .....	.3				
Total .....	7.06%				
7.06% of labor	\$ 452.44	\$ 83.14	\$ 37.53	\$ 311.20	\$ 884.31
Axis mile tax					
Average rate 1/4¢ per mile .....	-0-		-0-	895.38	997.50
Rate 1/4¢ per mile .....	-0-	102.12			
Liability Insurance					
\$2.04 per \$100 of revenue .....	375.49	93.98	77.08	420.33	966.88
Costs and expenses being variable in some de- gree (by agreement with defendants' account- ant and represents the following: Parts and accessories, tires and tubes, garage and shop supplies, tire recapping, freight and cartage) ..	930.80	557.73	169.30	1,955.93	3,613.76
80/120 or 61.5% of gasoline cost					
Total Additional Chargeable Costs .....	\$ 1,758.73	\$ 836.97	\$ 282.91	\$ 3,582.84	\$ 6,462.45
Net Loss as Computed .....	\$ 8,684.92	\$ 1,644.79	\$ 2,741.79	\$ 9,289.91	\$22,361.41
			66.46		66.46
			2,675.33		2,675.33

PLAINTIFF'S EXHIBIT 18

[fol. 476]

## PLAINTIFF'S EXHIBIT 21

In the Common Pleas Court of Seneca County, Ohio  
No. 29,500

LESTER MORTON, d/b/a Lester Morton Trucking Co.,  
Plaintiff,

v.

LOCAL No. 20, TEAMSTERS, etc., et al., Defendants.

## Motion.

Now come the defendants and moves the Court to Dis-  
miss the temporary restraining order of the Plaintiff's, be-  
cause there is no basis for it both in law and in fact.

Fink & Canelli,  
Attorneys for the Defendants.

[fol. 477]

## PLAINTIFF'S EXHIBIT 22

29500

Seneca Common Pleas Appearance and Execution  
Docket—No. 91.

August 21" 1956

Amount Deposited by Lester Morton.

To Apply on Costs \$25.00.

## Names of Parties to Suit.

Lester Morton, D. B. A. Lester Morton Trucking Co., Route  
#2, Tiffin, Ohio,

vs.

Local 20, Teamsters, Chauffeurs and Helper's Union, an  
affiliate of the International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Helper's of America,  
807 East State Street, Fremont, Ohio;



[fol. 499]

## DEFENDANT'S EXHIBIT E

Lester W. Morton  
Hauling Contractor  
Findlay Road  
Phone 2657-

Tiffin, Ohio

August 31, 1956

To all employees of Lester Morton Trucking Co.:

I think that each of you has the right to hear directly from me regarding my position concerning the labor contract negotiations with the Teamsters Local 20.

I met with the union on August 15th, 1956 and the union told me that if I did not agree to its contract that day, there would be a strike the next morning. The union knew that it was impossible for me to agree to an entire contract on such short notice. The union was not satisfied with a lawful strike but engaged in unlawful mass picketing and unlawful interference with my business relations with various customers and suppliers. As you know, this unlawful conduct is now prohibited by a Court Order which was issued on August 22nd and which is still in effect. I want to be fair with you and the union, but I will not tolerate unlawful acts.

I met with the union again on August 29th and discussed contract terms with its representatives. We were able to agree on several points but the union, as yet, has not indicated its willingness to agree that I will not be bound by a contract until most of my competitors are. I simply cannot afford to agree to a contract without a provision that will protect me in this regard. Therefore, whether a contract is eventually signed, is a matter that [fol. 500] the union has within its power to prevent or accomplish. In the meantime, I expect to conduct my business under the protection of the Court Order, and, so long as the few remaining open jobs remain, any of my former employees who are now on strike, will be considered for

these jobs. In short, my willingness to sign a contract has and will not be effected by this strike.

Sincerely,

Lester Morton,  
Lester Morton.

DEFENDANT'S EXHIBIT H

Morton vs. Local 20.

Toledo, Ohio

Payroll Week Ending	No. of Drivers	Payroll			
		Office	Mechanics	Drivers	Total
7/ 7/56	39	\$176.40	\$1,035.31	\$1,541.00	\$2,752.71
7/14	39	176.40	1,175.21	2,928.00	4,279.61
7/21	50	164.25	1,141.84	3,723.02	5,029.11
7/28	51	179.10	1,149.46	4,254.13	5,582.69
8/ 4	50	176.40	1,029.89	2,838.03	4,044.32
8/11	48	176.00	1,070.42	3,413.08	4,659.90
8/18	32	177.75	838.20	1,256.40	2,271.00
8/25	20	179.10	920.82	1,146.28	2,244.85
9/ 1	29	176.40	930.46	2,233.89	3,343.45
9/ 8	32	176.40	851.09	1,737.47	2,764.96
9/15	30	176.40	979.34	2,077.12	3,232.86
9/22	33	176.40	957.71	2,518.44	3,652.55
9/29	34	176.40	928.11	2,838.73	3,943.24
10/ 6	37	176.40	781.66	2,850.38	3,808.44
10/13	48	180.45	1,082.68	4,080.84	5,343.97
10/20	48	176.40	1,028.75	4,366.31	5,571.46
10/27	51	176.40	1,130.41	4,699.35	6,006.19
11/ 2/56	48	179.10	1,025.43	4,337.48	5,542.01

[fol. 508]

## DEFENDANT'S EXHIBIT O

Flynn, Py & Kruse  
Attorneys and Counsellors  
165 East Washington Row  
Sandusky, Ohio

Telephone 213

James F. Flynn  
John R. Py  
Richard R. Kruse  
Raymond N. Watts

Melvyn J. Stauffer  
August 10, 1956

Mr. Lawrence Evans  
Teamsters Local  
Union Hall  
Fremont, Ohio

Dear Mr. Evans:

As requested, please find enclosed a copy of the contract proposed by our client, Mr. Lester Morton.

Confirming our telephone call over long distance of the 10th, we and Mr. Morton will meet with you at the Union Hall in Fremont on August 16th, at 3:00 o'clock P. M. to discuss the proposed contract.

Yours very truly,

Flynn, Py &amp; Kruse,

By M. J. Stauffer,  
M. J. Stauffer.

mjs/b  
encl.

[fol. 509]

## Article I. Employment.

Section 1. The Company and Union agrees that all employees who are covered by this agreement shall become members of the Union within sixty days after the execution of this agreement or within thirty days after they are hired, whichever date is later.

## Article II. Recognition.

Section 1. The Company recognizes the Union and the exclusive representative for purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment as provided herein for all of its employees, except its supervisory employees, all garage employees, office and clerical employees, which supervisory, office and clerical employees, shall not be included in the bargaining unit.

[Articles relating to rates of pay, scope of agreement, check off, management and administration, seniority, leaves of absence, grievance procedure and off season work omitted.]

## Article XI. Effective Date.

Section 1. This agreement shall become effective when agreements, agreed by the Company and the Union to be substantially identical to this agreement, have been executed between the Union and eighty percent (80%) of the Company's competitors in the type of work covered hereunder who own and operate three (3) or more trucks in [fol. 510] Erie, Huron, Sandusky, Seneca, and Ottawa Counties, Ohio. This agreement shall continue in full force and effect for one (1) year from and after the effective date hereof.

In Witness Whereof, the parties hereto have executed this agreement in duplicate this ..... day of ..... 1956.

Company:

Lester Morton Trucking Company,

By .....

Union:

Local ..... of the International  
Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and  
Helpers of America, AFL-CIO.

By .....

[fol. 586]

DEFENDANT'S EXHIBIT R

Finn, Py & Kruse  
Attorneys and Counsellors

165 East Washington Row

Sandusky, Ohio

Telephone 213

James F. Flynn  
John R. Py  
Richard R. Kruse  
Raymond N. Watts

Melvyn J. Stauffer  
August 30, 1956

Honorable Robert J. Vetter  
Judge, Huron County Common Pleas Court  
Huron County Court House  
Norwalk, Ohio

Re: Lester Morton et al. v. Teamsters-Local 20 etc.  
et al. Seneca County Common Pleas Case No.  
29,500.

Dear Judge Vetter:

At the conclusion of the proceedings on August 27th,  
you asked to be informed of the developments of the labor

negotiations between the parties, in the captioned matter, on August 29th.

We met at the labor hall in Fremont and present were, among others, Attorney Jack Gallon and Secretary Wes. Meinke for the union and Messrs. Watts, Morton and the undersigned for the company. We discussed contract terms for four solid hours without any recess and made some real progress as the result of both sides compromising on some [fol. 587] points. We have not, however, reached the critical question of the manner in which Mr. Morton can be protected until the union has contracts with his competitors. There are also several other points which will be most difficult to resolve.

The next negotiation session has been tentatively set for September 4th at 1:30 o'clock P. M. at the Fremont Labor Hall. If the meeting is not held that day, it will be held the following day.

We will keep you posted on the developments.

Sincerely yours,

Flynn, Py & Kruse,

By: M. J. Stauffer.

MJS:mjb

cc: Mr. Jack Gallon



[fol. 588]

## DEFENDANT'S EXHIBIT S

Flynn, Py & Kruse  
Attorneys and Counsellors  
165 East Washington Row  
Sandusky, Ohio

Telephone 213

James F. Flynn  
John R. Py  
Richard R. Kruse  
Raymond N. Watts

Melvyn J. Stauffer  
September 8, 1956

Honorable Robert J. Vetter  
Huron County Common Pleas Judge  
Huron County Court House  
Norwalk, Ohio

Re: Morton v. Teamsters Local #20, et al Seneca  
County Case No. 29,500

Dear Judge Vetter:

We are in receipt of a copy of a letter addressed to you from Attorney Jack Gallon in the above matter dated Sept. 7, 1956.

Without bothering you with each incorrect statement in Mr. Gallon's letter, we would like to set the record straight by pointing out that although many individual clauses have been tentatively agreed to, there are many more important ones that have not been agreed to and will take additional conscientious negotiation.

The union has not signed contracts with five or six of Morton's competitors. The signatories, with one or two exceptions, are suppliers of Morton. (We assume that Mr. Gallon's second paragraph contains a typographical [fol. 589] error in indicating that the union wants a list of our "creditors", but one can never be sure.) Actually, we have submitted the names of 22 competitors to the union and will have more to submit this Monday.

Frankly, we are appalled by Mr. Gallon's unfair statement that we have been stalling and holding up the settlement of the labor dispute. Actually, the negotiations have been conducted at a sacrifice of our other work and Mr. Morton, of course, is losing money daily as a result of the strike.

We will, of course, be ready to resume the hearing at the Court's pleasure.

Very truly yours,

Flynn, Py & Kruse,

By: M. J. Stauffer.

MJS:mjb

cc: Atty. Gallon

[fol. 590]

DEFENDANT'S EXHIBIT T

Flynn, Py & Kruse  
Attorneys and Counsellors

165 East Washington Row

Sandusky, Ohio

Telephone 213

James F. Flynn

John R. Py

Richard R. Kruse

Raymond N. Watts

Melvyn J. Stauffer

Sept. 12, 1956

Mr. Jack Gallon  
Fink & Canelli  
Attorneys-at-Law  
921 Edison Bldg.  
Toledo, Ohio

Re: Lester Morton Trucking Co. v. Teamsters Local  
No. 20 etc.

Dear Jack:

Enclosed you will find a very hastily prepared instrument which contains what I believe to be the clauses tenta-

tively agreed upon by the parties and the Company's proposals for certain other important provisions. I trust that you will overlook any errors that I have made. I had great difficulty in unscrambling my notes of our rambling negotiations.

It is my suggestion that if there is sufficient time, after the depositions Friday, you and I can go to the Fremont Hotel where we can discuss the enclosure. I would be [fol. 591] happy to take you to dinner if you have the time that evening.

Very truly yours,

Flynn, Py & Kruse,

By Mel,

M. J. Stauffer.

MJS:mjb

encl.

cc: Mr. Morton

Proposed agreement between Lester Morton and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.

This agreement made and concluded this ..... day of ....., 1956, by and between Lester Morton d/b/a Lester Morton Trucking Company of Tiffin, Ohio (hereinafter referred to as the "Company") and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (hereinafter referred to as the "Union").

[Substantive clauses relating to recognition, rates of pay, check off of Union dues, scope of agreement and emergency provisions, management and administration, leaves of absence, seniority, rest periods, grievance procedure omitted.]

## Article XI.

## Effective Date.

Section 1. This agreement shall become effective when, and remain effective so long as agreements, agreed by the [fol. 592] Company and Union to be substantially identical to this agreement, have been executed between the Union and eighty percent (80%) of the following of the Company's competitors in the type of work covered hereunder who own and operate three (3) or more trucks in Erie, Huron, Sandusky, Seneca, and Ottawa Counties, Ohio:

Section 2. This agreement shall continue in full force and effect for three years from and after the effective date hereof unless it lapses as provided in Section 1 above.

In Witness Whereof, the parties hereto have executed this agreement in duplicate this ..... day of ....., 1956.

[Lines for signature omitted.]

## DEFENDANT'S EXHIBIT U

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO,  
WESTERN DIVISION.

No. Civil 8222.

LESTER MORTON dba Lester Morton Trucking Company,  
Plaintiff,

v.

LOCAL 20, TEAMSTERS, CHAUFFEURS, AND HELPERS UNION,  
an Affiliate, etc., et al., Defendant.

## Motion to Dismiss.

Defendant moves the Court for an order dismissing the amended complaint in the captioned case since the court

[fol. 593] lacks jurisdiction of the subject matter and the amended complaint fails to state a claim upon which relief can be granted.

Law Offices of Jack Gallon.

[fol. 604]

**DEFENDANT'S EXHIBIT Y**

MJS/jg 8/6/58 6

In the Common Pleas Court of Seneca County, Ohio.

No. 30057.

**LESTER MORTON, d/b/a Lester Morton Trucking Company,  
Route No. 2, Tiffin, Ohio, Plaintiff,**

**v.**

**LOCAL 20, TEAMSTERS, CHAUFFEURS, AND HELPER'S UNION,  
an Affiliate of the International Brotherhood of Team-  
sters, Chauffeurs, Warehousemen and Helper's of  
America, 807 East State Street, Fremont, Ohio,**

**LAWRENCE EVANS, Individually and as Business Agent for  
Local 20, Teamsters, Chauffeurs and Helper's Union,  
807 East State Street, Fremont, Ohio,**

**EDWARD SULLENGER, Individually and as Business Agent  
for Local 20, Teamsters, Chauffeurs and Helper's  
Union, 4653 Hannaford Drive, Toledo, Ohio,**

**IRVIN MOWRY, Individually and as Business Agent for Local  
20, Teamsters, Chauffeurs and Helper's Union, R. F. D.  
Bloomville, Ohio, Defendants.**

**Petition.**

(Filed 8/14/58 at 1:12 P. M.)

**First Cause of Action.**

Now comes the plaintiff and for his first cause of action says that he is engaged in the trucking business as a sole [fol. 605] proprietor under the name of Lester Morton Trucking Co. at Tiffin, Ohio, and he has been so engaged at

said place of business at all times hereinafter complained of.

Plaintiff further says Defendant Local 20, Teamsters, Chauffeurs, and Helper's Union is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helper's of America; and that defendants Lawrence Evans, Edward Sullenger, and Irvin Mowry are business agents for said defendant Local 20.

Plaintiff further says that defendants Lawrence Evans, Edward Sullenger, and Irvin Mowry are sued individually and as an officer, agent or member of said defendant Local 20 and that said defendant's officers, agents and members are duly authorized and do represent and receive orders and directions from said defendant Local 20 in all matters herein complained of.

Plaintiff further says that on the 17th day of August, 1956, at about 5:30 o'clock a. m. certain of the defendants and certain other individuals unknown to the plaintiff appeared at the entrance of his place of business carrying signs which stated that defendant Local 20 was on strike against the plaintiff and engaged in unlawful mass picketing against the plaintiff.

Plaintiff further says that said unlawful mass picketing was continued by the defendants until August 21, 1956 on which date an injunction against said unlawful picketing was issued by this court against the defendants; and that said unlawful mass picketing continued even after the issuance of said injunction and that said court order was violated by some or all of the defendants herein.

Plaintiff further says that in picketing the business premises of the plaintiff as aforesaid, each of the defendants [fol. 606] acted in concert with all of the other defendants in organizing, promoting, conducting and prosecuting said unlawful mass picketing and individually and in concert with each other participated in, counseled, encouraged, aided and abetted and knowingly and willingly permitted said unlawful mass picketing by as many as sixteen (16) persons.



Plaintiff further says that as a result of defendants' unlawful mass picketing as aforesaid, the defendants and each of them seriously interfered with the conduct of plaintiff's business and with the rights of the plaintiff and the public to free, unobstructed and peaceful ingress to and egress from plaintiff's place of business.

Plaintiff further says that as the result of the aforesaid conduct and acts on part of the defendants, plaintiff was prevented from conducting its normal business operations, and lost several large and profitable jobs.

### Second Cause of Action.

For his second cause of action Plaintiff incorporates herein by reference all the allegations set forth in his first cause of action as fully as if set forth at length herein and further says that during the course of the strike against the plaintiff engaged in by the defendants as set forth in the first cause of action, the defendants engaged in unlawful secondary boycott activities against the plaintiff with the purpose and malicious intent to destroy the business of the plaintiff.

Plaintiff further says the unlawful and malicious secondary boycott activities engaged in by the defendants against the plaintiff, as aforesaid, caused great damage to the plaintiff in that he lost numerous trucking jobs [fol. 607] as a result of said secondary boycott activities from which he would have received substantial profits but for said secondary boycott activities.

Plaintiff further says that he has been further damaged by the unlawful, wrongful and malicious acts of the defendants set forth in this petition in that it was necessary for him to retain legal counsel, at considerable expense, to obtain an injunction against said defendants arising out of said unlawful, wrongful and malicious acts.

Wherefore, plaintiff prays judgment against the defendants in the amount of Fifty Thousand Dollars (\$50,000.00) as compensatory damages and Fifty Thousand Dollars (\$50,000.00) as punitive damages for a total of One Hun-

dred Thousand Dollars (\$100,000.00) plus the costs of this action and for such other and further relief as may be just and proper in the premises, both at law and in equity.

Flynn, Py & Kruse,  
Attorneys for Plaintiff.

State of Ohio }  
County of Erie } ss.:

Lester Morton being first duly sworn, says that he is the plaintiff in the foregoing action and that the statements and allegations contained therein are true as he verily believes.

LESTER MORTON,  
Lester Morton.

Sworn to before me and subscribed in my presence this  
14 day of August, 1958.

M. J. STAUFFER,  
Notary Public.

[fol. 608]

Praeceptum.

To the Clerk:

Please issue summons to the Sheriff of Seneca County, Ohio, for service upon defendant, Irwin Mowry, individually and as business agent for Local 20, Teamsters, Chauffeurs and Helper's Union.

Also issue summons to the Sheriff of Lucas County for service upon defendant Edward Sullenger, individually and as business agent for Local 20, Teamsters, Chauffeurs and Helper's Union.

Also issue summons to the Sheriff of Sandusky County, Ohio for service upon defendants, Lawrence Evans, individually and as business agent for Local 20, Teamsters, Chauffeurs and Helper's Union, and Local 20, Teamsters, Chauffeurs and Helper's Union.

Endorse on all of said summonses: "Action for Monetary and Other Relief; Amount Claimed One Hundred Thousand Dollars (\$100,000.00)", and make same returnable according to law.

Flynn, Py & Kruse,  
Attorneys for Plaintiff.

[fol. 609]

## DEFENDANT'S EXHIBIT Z

In the Court of Common Pleas of Seneca County, Ohio.

No. 30057.

LESTER MORTON, d/b/a Lester Morton Trucking, Plaintiff,

v.

LOCAL 20, TEAMSTERS, CHAUFFEURS, AND HELPERS UNION,  
an Affiliate of the International Brotherhood of Team-  
sters, Chauffeurs, Warehousemen and Helpers of  
America, et al., Defendants.

## Motion to Dismiss.

(Filed 9/26/58 at 8:54 A. M.)

Now come the defendants herein who have been duly served by and through their attorney, Jack Gallon, and move the court to dismiss the petition filed herein on the ground that this court lacks jurisdiction of the subject matter of the action, and lacks jurisdiction to grant the relief requested on the ground that the conduct complained of is pre-empted and foreclosed to state authority and control by the Labor Management Relations Act, 1947; 61 Stat. 136, 29 U. S. C. A. 145.

Said defendants who have been duly served further request the court for an order to dismiss either the first cause of action herein or the second cause of action herein if the court does not grant the relief asked for by said defendants above. This relief is prayed for on the same grounds as the motion to dismiss the entire action as stated above.

•   •   •   •   •   •   •

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[fol. 610]

## DEFENDANT'S EXHIBIT AA

In the Common Pleas Court of Seneca County, Ohio.

No. 30057.

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LESTER MORTON, d/b/a Lester Morton Trucking Company,  
Plaintiff,

vs.

LOCAL 20, TEAMSTERS, etc., et al., Defendants.

---

Journal Entry.

(Filed 6/23/59 at 8:56 A. M.)

It is Ordered that this matter be, and the same hereby is, dismissed otherwise than upon the merits, without the consent of the plaintiff, without prejudice to a new action based upon the same subject matter, and for the reason that the Court does not have jurisdiction of the subject matter under the decision of the United States Supreme Court in San Diego Building Trades Council v. Garmon, 49 ALC 485. Exceptions saved to the plaintiff and defendant's Costs taxed to the plaintiff.

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Judge.

Approved as to Form:

---

Attorneys for Plaintiff,

---

Attorney for Defendant.

[fol. 611]

## DEFENDANT'S EXHIBIT BB

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO,  
WESTERN DIVISION.  
C. A. No. 8222.

---

LESTER MORTON, etc., Complainant,

v.

LOCAL 20 TEAMSTERS, etc., Defendant.

---

## Answer to Second Amended Complaint.

1. For answer to the Second Amended Complaint of the plaintiff as to the allegations contained in paragraph 1 of said Second Amended Complaint, defendant admits that there is no diversity of citizenship between the parties.

2. With respect to the allegations of the Second Amended Complaint contained in paragraph 2 of plaintiff's Second Amended Complaint, defendant admits that plaintiff is engaged in the trucking business as a sole proprietor under the name of Lester Morton Trucking Company at Tiffin, Ohio.

3. Further answering, defendant denies that the amount in controversy exceeds the sum of Ten Thousand Dollars (\$10,000).

4. Defendant admits that it is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

5. Defendant denies the allegations in paragraph 5 of plaintiff's Second Amended Complaint.

[fol. 612] 6. Defendant denies the allegations of paragraph 6 of plaintiff's Second Amended Complaint.

7. Defendant denies the allegations of paragraph 7 of plaintiff's Second Amended Complaint.

8. Defendant denies the allegations of paragraph 8 of plaintiff's Second Amended Complaint.

9. Defendant denies the allegations of paragraph 9 of plaintiff's Second Amended Complaint.

10. Defendant denies the allegations of paragraph 10 of plaintiff's Second Amended Complaint.

11. Defendant denies the allegations of paragraph 11 of plaintiff's Second Amended Complaint.

12. Defendant denies each and every allegation contained in plaintiff's Second Amended Complaint not hereinabove specifically admitted to be true or otherwise specifically denied.

13. As an affirmative defense the Defendant alleges that on the 14th day of August 1958, the Plaintiff in the instant proceeding commenced an action in the Common Pleas Court of Seneca County, Ohio, praying for damages against the Defendant in the instant action. Such State Court proceeding was filed as No. 30057 and was commenced upon a petition, in all material respects, identical to the complaint filed in the instant case. Such state court action was dismissed pursuant to the following journal entry and judgment of the Common Pleas Court of Seneca County, Ohio entered on the 23rd day of June 1959:

It is Ordered that this matter be, and the same hereby is, dismissed otherwise than upon the merits, without the consent of the plaintiff, without prejudice [fol. 613] to a new action based upon the same subject matter, and for the reason that the Court does not have jurisdiction of the subject matter under the decision of the United States Supreme Court in San Diego Building Trades Council v. Garmon, 49 ALC 485. Exceptions saved to the plaintiff and defendants. Costs taxed to the plaintiff.

The State Court proceeding, journal entry and judgment described above is res judicata of and bars the prosecution of the instant case.



Wherefore defendant prays that the Second Amended Complaint of the plaintiff be dismissed; that the relief sought by plaintiff be denied and that defendant recover its costs herein.

Law Offices of Jack Gallon,

By \_\_\_\_\_  
Attorneys for Defendant.

[fol. 620]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
Civil Action No. 8222

LESTER MORTON, d/b/a LESTER MORTON TRUCKING COMPANY,  
Route #2, Tiffin, Ohio, Plaintiff,

vs.

LOCAL 20, TEAMSTERS, CHAUFFEURS, AND HELPERS UNION, an  
affiliate of the International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Helpers of America,  
Toledo 6, Ohio, Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW—  
Filed January 26, 1962

Findings of Fact.

1. At the inception of the strike hereafter described, the Plaintiff had for many years been engaged in the trucking business in Tiffin, Ohio and he engaged, among other things, in general dump truck operations in which he used his own employees to operate a fleet of approximately 50 dump trucks which were used primarily in work on highway construction. For some years prior to the year 1956 Plaintiff's drivers were members of Local 625 of the Teamsters Union, and when that Union was merged into [fol. 621] the Defendant, those employees became members

of the Defendant, and were such members throughout the period of the strike in question. There was no contract between the Defendant and the Plaintiff prior to the strike in question.

2. In August of 1956, Plaintiff's drivers had met with representatives of the Defendant and had voted to strike in the event that the parties could not agree upon the terms of a contract. Plaintiff met with representatives of the Defendant on August 16, 1956, at the offices of the Defendant in Fremont, Ohio. No contract was concluded at that meeting and in the early morning of August 17, a large number of Plaintiff's drivers and representatives of the Defendant appeared at Plaintiff's garage and office premises in Tiffin and initiated the strike against the Plaintiff, which continued until October 5, 1956, when a contract was signed by the parties. That contract, Defendant's Exhibit D, was dated October 5, 1956, to expire March 1, 1959. At the time of the trial of this case in late April and early May of 1961, there was no contract between the parties.

3. Plaintiff's premises were struck by the Defendant on the 17th day of August, 1956, and, on August 21, 1956, pursuant to motion filed by Plaintiff in connection with the petition filed in the Common Pleas Court of Seneca County, Ohio, by the Plaintiff herein against the Defendant herein and certain business agents and members of the Defendant, that court issued a restraining order "restraining the individual defendants and each and all of them, and all persons associated with or acting in concert with said defendants and all others to whom knowledge of this order shall come:

"1. \* \* \*

[fol. 622] "2. From interfering with, or by violence, force, intimidation or threats, preventing or attempting to prevent plaintiff, his agents, employees, representatives, customers and others having business with the plaintiff, from entering or leaving plaintiff's place of business and from in any way interfering with, ob-

structing, delaying or stopping plaintiff's lawful operation of his business or maintenance of his equipment.

"3. From, whether by secondary boycotts or otherwise, interfering with, or by violence, force, intimidation or threats, preventing or attempting to prevent any of plaintiff's customers or any other members of the public from having business relations with the plaintiff.

"4. From following plaintiff's agents, employees and representatives on the public highways or elsewhere.

"5. . . .

"6. From picketing, other than peaceably and by more than two pickets at each entrance, the plaintiff's place of business or any part thereof.

"7. . . .

"8. . . ." (Plaintiff's Exhibit 2).

4. From and after the issuance of the aforesaid restraining order, Defendant observed the requirements of paragraph 6 above, in that it thereafter confined its number of pickets at each entrance to the Plaintiff's place of business to two. At no time during the strike period, to wit, August 17, 1956 to October 5, 1956, both inclusive, was violent conduct engaged in.

[fol. 623] 5. The Plaintiff's contract to haul all of Seneca County's requirements of stone for surface treatment of the County's hardtop roads was terminated August 17, 1956 by Seneca County Engineer William Heim as a result of his learning from his road superintendent of Defendant's strike against the Plaintiff. This termination occurred several days prior to the date Defendant's business agent Lawrence Evans called upon said county engineer and advised him of Defendant's strike against the Plaintiff. The unlawful activities of the Defendant, hereafter described, had nothing to do with the decision of the said

county engineer to terminate said contract. The damages Plaintiff suffered as a result of the termination of said contract, \$2,675.33, were too remote to be considered in the computation of damages herein.

6. (a) One of Plaintiff's source of materials at the time of Defendant's strike against him was the sand and gravel pit of the France Stone Company at Bloomville, Ohio, approximately 8 to 10 miles from Plaintiff's garage terminal.

(b) During the course of the said strike and in violation of the restraining order referred to in paragraph 3, supra, the Defendant encouraged the employees of the France Stone Company at its Bloomville sand and gravel pit to engage in a concerted refusal to load Plaintiff's trucks or perform other services for the Plaintiff for the purpose of requiring the France Stone Company to cease doing business with the Plaintiff and for the purpose of forcing or requiring the Plaintiff to recognize or bargain with the Defendant which was not certified as the representative of the Plaintiff's employees.

7. (a) One of Plaintiff's customers at the time of the Defendant's strike against him was the Louis O'Connel Coal Co. of Tiffin, Ohio, which customer engaged in the [fol. 624] business of making ready-mix concrete. At the time of the strike, Plaintiff had a contract with the O'Connel company requiring and permitting the Plaintiff to haul all of such customer's requirements of sand and gravel for such ready-mix concrete manufacturing operation.

(b) During the course of Defendant's strike against the Plaintiff, the Defendant encouraged the employees of the O'Connel company to engage in a concerted refusal to use Plaintiff's trucks for the purpose of forcing or requiring the O'Connel company to cease doing business with the Plaintiff and for the purpose of forcing or requiring the Plaintiff to recognize or bargain with the Defendant which was not certified as the representative of Plaintiff's employees.

(c) During the same strike, the Defendant also contacted the management of the O'Connel company directly

and advised it of the strike against the Plaintiff and asked the cooperation of the O'Connel company management in connection with such strike.

(d) As a result of Defendant's aforesaid activity, the O'Connel management ceased doing business with the Plaintiff for the duration of the strike.

8. (a) At the time of Defendant's strike against the Plaintiff, Launder & Son, Inc. of Toledo, Ohio, a general highway contractor, was engaged in constructing the bypass of U. S. Route 20 around Fremont, Ohio and Plaintiff, under a subcontract with Launder & Son, Inc. was doing all of the batching on such project, i.e., transporting by truck all of the dry ingredients such as sand, gravel and cement from a stockpile to a self-propelled cement mixer that mixed and laid the concrete for the highway.

(b) During the course of the strike and in violation of the restraining order referred to in paragraph 3, supra, [fol. 625] Defendant contacted the management of Launder & Son, Inc. and asked that the Plaintiff's trucks not be permitted to work on such job during the strike.

(c) As a result of the Defendant's request, Launder & Son, Inc. ceased doing business with the Plaintiff and Plaintiff did not work on such construction job after August 22, 1956, until the strike had been terminated.

9. (a) At the time of Defendant's strike against the Plaintiff, C. A. Schoen, Inc. of Toledo, Ohio manufactured asphalt paving material and was purchasing all of its requirements of sand by using Plaintiff as the hauler of that sand.

(b) During the course of the strike, Defendant encouraged the employees of C. A. Schoen, Inc., to engage in a concerted refusal to unload Plaintiff's trucks or perform other services for the Plaintiff for the purpose of requiring C. A. Schoen, Inc. to cease doing business with the Plaintiff and for the purpose of requiring the Plaintiff to recognize or bargain with the Defendant which was not certified as the representative of Plaintiff's employees.



(c) During the same strike and both before and after the issuance of and in violation of the restraining order referred to in paragraph 3, supra, the Defendant also contacted the management of C. A. Schoen, Inc. directly and asked such management to cease doing business with the Plaintiff.

(d) The Defendant was successful in its efforts to cause C. A. Schoen, Inc. to cease doing business with the Plaintiff until the issuance of said restraining order and continued its efforts, unsuccessfully, thereafter.

10. During the course of the strike, Defendant caused some of Plaintiff's employees who did go to work and [fol. 626] drive Plaintiff's trucks, to be followed in automobiles by Defendant's agents and striking members. This activity had the result of discouraging return to work by an employee who did not want to drive one of Plaintiff's trucks and get followed or get hurt. Accordingly, this activity made the strike of the Defendant against the Plaintiff more effective to prevent Plaintiff's employees from returning to work than it would have been but for such activity.

11. (a) At the time of the strike, Wilson Sand & Gravel Co. of Upper Sandusky, Ohio was supplying sand to the V. N. Helderman Co. for its job of constructing a bypass of U. S. Route 25 around Findlay, Ohio and Plaintiff had an agreement with the Wilson Sand & Gravel Co. entitling Plaintiff to haul all of such sand from the Wilson pit near Upper Sandusky, Ohio to the construction site near Findlay, Ohio.

(b) As a result of the combination of lawful and unlawful strike activity of the Defendant, Plaintiff had an insufficient number of truck drivers during the strike to perform fully his contract with Wilson Sand & Gravel Co., and the sand that Plaintiff was accordingly unable to haul was hauled by other truckers who were obtained by the Wilson Sand & Gravel Co.

12. The special damages suffered by Plaintiff for which he should be awarded a judgment for compensatory damages herein total \$19,619.62.



13. The acts of the Defendant described at paragraphs 6 (b), 7 (b), 7 (c), 8 (b), 9 (b), 9 (c) and 10, supra, had the objective of bringing the Plaintiff to his knees and were done intentionally, maliciously and with wanton disregard of the legal rights of the Plaintiff and others.

[fol. 627] 14. The Plaintiff should be awarded a judgment for punitive damages herein in the amount of \$15,000.00.

### Conclusions of Law.

1. On the basis of the pleadings and the entire evidence, the Plaintiff's claim that Defendant engaged in secondary activity unlawful under 29 U. S. C. A., Section 187, raises or presents a substantial federal question and consequently the Court has jurisdiction to adjudicate such claim.

2. The material and operative facts supporting the Plaintiff's federal claim of unlawful secondary activity are substantially the same as the facts supporting his non-federal or state common law claim of unlawful secondary activity.

3. The claim of unlawful secondary activity violative of 29 U. S. C. A., Section 187, and unlawful secondary activity violative of the common law of Ohio are not separate causes of action but are merely different grounds to support a single cause of action, the cause of action being the violation by the Defendant of Plaintiff's right to be free of unlawful interference with his business.

4. By reason of Conclusions 1, 2 and 3 above, the Court has jurisdiction of the non-federal claim of unlawful secondary activity violative of the common law of Ohio, under the doctrine of *Hurn v. Oursler*, 289 U. S. 238, 53 S. Ct. 86 and *UMW v. Meadow Creek Coal Co.*, 263 F. (2) 52, cert. den., 359 U. S. 1013, and may award compensatory and punitive damages under such common law as well as under the aforesaid federal law.

5. The activities of the Defendant described in Findings of Facts paragraphs Nos. 6 (b), 7 (b) and 9 (b) violated [fol. 628] 29 U. S. C. A., Section 187, and the activities of the Defendant described in Findings of Facts paragraphs Nos. 6 (b), 7 (b), 7 (c), 8 (b), 9 (b), and 9 (c) violated

the Ohio common law regarding unlawful secondary activity and compensatory and punitive damages may be awarded to the Plaintiff accordingly.

6. As the result of the Defendant engaging in both lawful and unlawful strike activity against the Plaintiff between August 17 and October 5, 1956, the totality of Defendant's efforts may be considered and damages may be awarded the Plaintiff based upon all loss suffered as a result of Defendant's unlawful strike activity against the Plaintiff and as a result of Plaintiff's having fewer truck driving employees working during the strike than he would have had but for the combination of Defendant's lawful and unlawful strike activity against the Plaintiff.

Frank L. Kloeb, United States District Judge.  
Toledo, Ohio.

[fol. 629]

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IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION  
No. 8222 Civil

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LESTER MORTON, d/b/a LESTER MORTON TRUCKING COMPANY,  
Route No. 2, Tiffin, Ohio, Plaintiff,

vs.

LOCAL 20, TEAMSTERS, CHAUFFEURS AND HELPERS UNION, an  
Affiliate of the International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Helpers of America,  
435 South Hawley Street, Toledo 6, Ohio, Defendant.

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OPINION OF THE COURT

(Filed December 26, 1961, C. B. Watkins, Clerk,  
U. S. District Court, N. D. O.)

Kloeb, J.

Under date of December 16, 1960, plaintiff filed his second amended complaint in which he alleges, in effect, the

following: That this action arises under the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. A. 145; that complainant is engaged in the trucking business as a sole proprietor under the name of Lester Morton Trucking Company, at Tiffin, Ohio, and that defendant is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; that, [fol. 630] on the 17th day of August, 1956, at about 5:30 o'clock A. M., the defendant wilfully, maliciously and in pursuance of a conspiracy to injure, damage and destroy complainant's trucking business, caused approximately fifteen men to appear at the complainant's business premises and to picket said place of business with signs or banners, and that the aforesaid picketing by large numbers of men was caused to continue until August 21, 1956, on which date an injunction against picketing by more than two men at each entrance was issued by the Common Pleas Court of Seneca County, Ohio, and that said picketing by large numbers of men continued in violation of said injunction, and with the knowledge of and under the instructions of the defendant; that defendant unlawfully obstructed and interfered with complainant's right to freely engage in his normal business activities by wilfully and maliciously threatening various persons and corporations with which the complainant had contractual relations with picketing at their construction sites if they continued to do business with complainant; that defendant further unlawfully obstructed and interfered with complainant's right to freely engage in his normal business activities by inducing and encouraging, and attempting to induce and encourage, certain employers and the employees thereof, having contractual business relations with the complainant, to engage in a concerted refusal to continue such contractual business relations with complainant, and to force and require the complainant to recognize and bargain with the defendant, who was not certified as the representative of the employees of the complainant; that defendant further unlawfully obstructed and interfered with complainant's rights by wilfully and maliciously inducing and encouraging the employees of other employers to engage in con-

certed refusals in the course of their employment to perform services, all for the purpose of forcing and requiring [fol. 631] such employers to cease doing business with the complainant; that the mass picketing and secondary boycott activities engaged in by the defendant against the complainant were in violation of the provisions of the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U. S. C. A. 145, and caused great damage to the complainant in that, among other things, (1) He lost numerous trucking jobs as a result thereof from which he would have received substantial profits but for said mass picketing and secondary boycott activities; (2) Numerous other jobs under contract by the complainant were delayed; and (3) Nearly all of complainant's trucking equipment was forced to remain idle during the aforesaid period of time.

Wherefore, complainant prays judgment against the defendant in the amount of \$50,000.00 as compensatory damages and \$50,000.00 as punitive damages.

In due course, defendant filed its answer, in which it generally denied the allegations of the second amended complaint.

It appears that the plaintiff had, for many years, been engaged in the trucking business in Tiffin, Ohio, and that he engaged, among other things, in general dump truck operations in which he used his own employees to operate a fleet of approximately fifty dump trucks which were used primarily in work on highway construction; that for some years prior to the year 1956 plaintiff's drivers were members of Local 625 of the Teamsters Union, and when that Union was merged into the defendant these employees became members of the defendant, and were such members throughout the period of the strike in question; that there was no contract between the defendant and the plaintiff prior to the strike in question.

It appears further that, in August of 1956, after plaintiff's drivers had met with representatives of the defendant [fol. 632] and had voted to strike in the event that the parties could not agree upon the terms of a contract, plaintiff met with representatives of the defendant on August 16, 1956, at the offices of the defendant in Fremont, Ohio;

that no contract was concluded at that meeting, and that, in the early morning of August 17, a large number of plaintiff's drivers and representatives of the defendant appeared at plaintiff's garage and office premises in Tiffin and initiated the strike against plaintiff, which continued until October 5, 1956, when a contract was signed by the parties; that said contract (Defendant's Exhibit D) was dated October 5, 1956, to expire March 1, 1959; that, at the time of the trial of this case in late April and early May of this year, there was no contract between the parties and apparently there is none at this date.

Plaintiff contends that the defendant engaged in unlawful strike activity during the strike when it encouraged the plaintiff's customers and suppliers, sometimes through their employees and sometimes directly, to stop doing business with the plaintiff; that, since the defendant engaged in unlawful activities against plaintiff, plaintiff is entitled to collect all damages he suffered as a result of defendant's total strike activity; that defendant violated both Federal statutory law and State common law, and that this Court, therefore, has jurisdiction to award damages.

Section 303 of the Labor Management Relations Act of 1947, 29 U. S. C. A., Sec. 187, during the period complained of, provided, in part, as follows:

"(a) It shall be unlawful . . . for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to . . . work on any goods . . . or to perform any services, where an object thereof is:

[fol. 633] "(1) forcing or requiring any employer . . . to cease using . . . or otherwise dealing in the products of any other producer . . . or to cease doing business with any other person;

"(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees . . .;



"(b) Whoever shall be injured in his business or property by reason of any violation of sub-section (a) of this section may sue therefor in any district court in the United States . . . without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

The unlawful secondary boycott by way of making direct appeals to a struck employer's customers or suppliers to stop doing business with the struck employer, which plaintiff complains of, is predicated upon several Ohio cases, and particularly the case of *Moores & Co. v. Bricklayers' Union et al.*, 10 Ohio Decisions Reprint 48 (affirmed by the Supreme Court of Ohio, 51 O. S. 65), and the case of *Schmidt Packing Co. v. Local Union No. 346, Amalgamated Meat Cutters & Butcher Workmen of North America et al.*, 48 ALC 547 (1947), and particularly the case of *W. E. Anderson Sons Co. v. Local 311, Teamsters, etc.*, 156 O. S. 541; also upon 33 Oh. Jur. 2, Labor, Sec. 64, *Secondary Boycott*, pages 187-188.

The right of recovery for damages for the common law tort of conspiracy is based upon the case of *Perko v. Local 203, etc., et al.*, 168 O. S. 161 (1958).

[fol. 634] Plaintiff relies upon the case of *Carpenters Union v. Cisco*, 266 Fed. (2d) 365 (cert. den. 361 U. S. 828), in his claim that he may recover damages measured by all of the revenue lost as the result of the entire strike activity of the defendant. In other words, he relies upon the "totality effort" rule.

In his claim of jurisdiction in this Court, as well as his right to rely upon the common law of the State, in addition to the Federal statute, plaintiff relies upon *United Mine Workers of America v. Meadow Creek Coal Co.*, 263 Fed. (2d) 52 (cert. den. 359 U. S. 1013), and *United Mine Workers of America v. Osborne Mining Co.*, 279 Fed. (2d) 716 (cert. den. 364 U. S. 881, 1960), and, in addition thereto, the common law of Ohio with respect to punitive damages as set forth in 16 Oh. Jur. 2d, *Damages* 281, Sec. 145 (*Tort Actions, Generally*), which reads, in part, as follows:



"It is an established principle of law in Ohio that in actions to recover damages for tort, which involve the ingredients of fraud, malice, or insult, or the wanton or reckless disregard of the legal rights of others, the jury may go beyond the rule of mere compensation of the party aggrieved, and award exemplary or punitive damages. . . ."

Plaintiff concedes that, to the extent that it was peaceful and non-massive, the picketing that occurred at the plaintiff's garage at Tiffin was lawful. He concedes that, if the defendant had limited itself to that type of lawful activity, plaintiff would not be entitled to recover any damages from the defendant. Plaintiff contends, however, that the defendant engaged in substantial unlawful activity during the period of the defendant's strike against the plaintiff, and that it is impossible to distinguish between the damages plaintiff suffered as the result of defendant's lawful [fol. 635] activity on the one hand and the defendant's unlawful activity on the other.

Plaintiff's premises were struck on the 17th day of August, 1956, and, on August 21, 1956, pursuant to motion filed by plaintiff in connection with the complaint filed in the Common Pleas Court of Seneca County, Ohio, that Court issued a restraining order "restraining the individual defendants and each and all of them, and all persons associated with or acting in concert with said defendants and all others to whom knowledge of this order shall come:

"1. . . .

"2. From interfering with, or by violence, force, intimidation or threats, preventing or attempting to prevent plaintiff, his agents, employees, representatives, customers and others having business with the plaintiff, from entering or leaving plaintiff's place of business and from in any way interfering with, obstructing, delaying or stopping plaintiff's lawful operation of his business or maintenance of his equipment.

"3. From, whether by secondary boycotts or otherwise, interfering with, or by violence, force, intima-

tion or threats, preventing or attempting to prevent any of plaintiff's customers or any other members of the public from having business relations with the plaintiff.

"4. From following plaintiff's agents, employees and representatives on the public highways or elsewhere.

"5. . . .

"6. From picketing, other than peaceably and by more than two pickets at each entrance, the plaintiff's place of business or any part thereof.

[fol. 636] "7. . . .

"8. . . ."

(Plaintiff's Exhibit 2.)

We conclude, from the evidence, that, from and after the issuance of the aforesaid restraining order, defendant observed the requirements of paragraph 6 above, in that it thereafter confined its number of pickets at each entrance to the plaintiff's place of business to two. We further conclude from the record that, at no time during the strike period, to wit, August 17, 1956, to October 5, 1956, both inclusive, was violent conduct engaged in.

The defendant contends that the primary strike and picketing at plaintiff's premises was not in violation of Section 303 of the Labor Management Relations Act of 1947; that it engaged in no illegal conduct with respect to the secondary or neutral employers; that inducements of individual employees do not violate Section 303 of the Act; that the picketing at France Stone Co. and Schoen Asphalt Paving Co. was primary and lawful, and that the evidence does not establish an inducement of the employees of these two concerns; that the pre-emption doctrine is an affirmative one, and that exclusive jurisdiction is vested in the National Labor Relations Board; that the pre-emption doctrine applies to conduct allegedly constituting a common law secondary boycott, and that in this case neither Federal nor State Courts have jurisdiction to award damages;

that since no evidence of mob action is involved in this case the decisions heretofore cited, to wit, the *United Mine Workers of America v. Meadow Creek Coal Co.*, *supra*, and the *United Mine Workers v. Osborne Mining Co.*, *supra*, are inapplicable, that the defendant engaged in no conduct which violated the State Court restraining order, and that this Court should not, for various reasons, exercise authority to award punitive damages.

[fol. 637] The defendant poses the following three questions as being the questions involved in this suit:

1. Whether the Union engaged in conduct which violates Section 303 of the Labor Management Relations Act of 1947;

2. Whether the Court has jurisdiction to entertain a claim for relief predicated upon an alleged common law secondary boycott;

3. Whether, in the circumstances of this case, punitive damages should be assessed against the Union.

The illegal acts complained of by plaintiff revolve around the France Stone Company, the Louis O'Connell Coal Company, the Launder & Son, Inc., and the C. A. Schoen, Inc. In addition thereto, the contracts involved those at the Wilson Sand & Gravel Co., and also the Seneca County contract.

During the trial of the case, which was tried to the Court, plaintiff's witness, William H. Heine, the Seneca County Engineer from Tiffin, Ohio, testified in connection with the contract that the County had with the Plaintiff for the hauling of stone for hardtop roads. He testified that Mr. Morton performed under the contract until August 17, 1956, and that, some time thereafter, Lawrence Evans, Business Agent of defendant, called at his office and asked him if he knew that a strike had been declared against Morton, and he replied that he did. However, on cross-examination, he stated that he had made the decision to discontinue with Morton several days before he was visited by Mr. Evans.

\*On the basis of this testimony, we concluded that the alleged unlawful activities of the defendant had nothing

to do with the decision of the County Engineer to terminate [fol. 638] the hauling contract with Morton, and that the damages claimed were too remote to be considered in any computation of damages. We sustained a defense motion to dismiss this claim and we, therefore, give it no further consideration.

In connection with the Wilson Sand & Gravel Co. contract, at the trial of the case we were concerned with the possible pertinency of the failure of plaintiff to perform under the contract to the conduct of the defendant of its strike, but we believe that, under the totality of effort rule, alleged damages in connection with this contract should be considered.

We believe that the acts of the defendant in connection with the France Stone Co., where Lawrence Evans, Business Agent of the defendant, took men who were striking against the plaintiff with picket signs to the premises of the France Stone Company and there set up a picket line was wrong. Plaintiff's Exhibit 13, a photograph taken by plaintiff on either the 23d or the 24th day of August, 1956, some two or three days after the issuance of the restraining order by the Common Pleas Court of Seneca County, establishes, beyond refutation, that the France Stone Company was picketed. The testimony of an employee of plaintiff, one John W. Combs (Record, p. 113), that, about a week after the strike commenced, he and his brother Joe were taken to the France Stone Co. by defendant's officer Evans corroborates the Exhibit 13. That these pickets were viewed by the employees of plaintiff, as well as the France Stone Co., is well established. The activities of defendant's agent Evans in contacting employees of the France Stone Co. is established.

We believe that the activity of defendant's agent at the France Stone Co. was unlawful under Section 303 and was an apparent effort to injure and coerce the plaintiff.

[fol. 639] In connection with the O'Connel Coal Co., which had been a customer of plaintiff for a number of years, it was the plaintiff's duty under the contract to haul all of the O'Connel Company's requirements of sand and gravel into its Tiffin plant for use in its ready-mix concrete manufacturing operation.

Here, through the activities of one Kenneth Lidster, an employee of the Coal Co., and a steward of the defendant local, and through the activities of Irvin Mowery, Business Agent of the defendant, the O'Connel people were alerted to the strike. Contacts were made with this company by Mowery by telephone, as well as by personal visits.

We believe that Section 303 was violated in that the defendant encouraged the employees of the O'Connel Company to stop using plaintiff's trucks for the purpose of forcing or requiring the O'Connel Company to cease doing business with the plaintiff; that defendant's activity in connection with this company was unlawful under the common law of Ohio.

In connection with the Launder & Son, Inc., contract, plaintiff had a contract to transport the "batching" by truck to and at the site of a highway improvement that the Launder & Son Company was engaged in constructing. Here defendant's Business Agent Evans took strikers to the Launder job and, while there, talked to a boss on the Launder job, and asked him not to let any of plaintiff's trucks work there.

In connection with the C. A. Schoen, Inc., company, defendant's Business Agent Evans, together with some of the strikers, followed trucks of plaintiff to a stone quarry and then followed the trucks to Toledo to the premises [fol. 640] of the Schoen company, where picketing was set up, where following conversation with defendant's Business Agent Sullenger, Schoen refused to permit the sand transported by plaintiff to be received. Other activities in connection with Schoen were along the same general lines. We believe that these activities were in violation not only of the Federal statute but the State common law.

In the course of the trial, Irvin Mowery was the first witness called by plaintiff. He testified that he was an organizer for Local 20, and that Sullenger, Evans and Reagan also worked out of the Toledo office; that on the morning of the strike, he observed Evans there and that there were around thirty of Morton's employees and three pickets on duty; that he went to the O'Connel Company the next day after the start of the strike, where the O'Connel em-



ployees were members of the defendant local; that he talked to their steward there and that, thereafter, he visited the O'Connel company once a week; that he talked with Howard Magers, Junior, President of the O'Connel company, three or four days before the strike and told him of the possibility of a strike, and at strike time he called Mr. Magers on the telephone and asked him his cooperation.

John W. Combs testified that he worked for plaintiff in 1956, and that he belonged to the defendant local; that, on the first day, he stood picket at 8:00 A. M. and around 25 men were out there; that he appeared again the next day and that the same number of men were there, and that when the Court order issued 6 or 8 were there at any one time; that he went out to the France Stone Company with his brother under the direction of Mr. Evans and there set up a picket with signs; that Evans took him and his brother Joe to Fremont where the by-pass of Route 20 was being constructed by the Launder Company, [fol. 641] and that Evans told the man at the gate not to let Morton's trucks in, and the man responded "I would like to go along with you"; that he and his brother and James Marcum, together with Evans, followed three of Morton's trucks as they came out empty at 9:00 A. M. to Maple Grove quarry five miles north of Tiffin where the trucks were loaded with No. 8 sand, and that they then followed the trucks into Toledo to the Schoen Asphalt Company where Evans talked with someone, and the trucks were not unloaded; that the drivers of the trucks left in a car, and that he and his brother got out with a picket sign along with James Marcum and placed themselves at the entrance. On cross-examination, he testified that after the Court order had issued the number of pickets at the entrances was reduced to 4.

Hubert Olds testified that he was a mechanic at the France Stone Company and a member of the operating engineers' Union; that a teamsters' Union man talked with the Plant Superintendent, C. C. Robinson, and himself.

Witness Vernon Beam testified that he and Stokes and Cliff Smith took three trucks to the Dolomite quarry and loaded them with sand, and that they were followed by



Evans, accompanied by Joe and John Combs; that they pulled into Schoen Asphalt just a few seconds after the trucks arrived; that Evans went into the office and that the Schoen Superintendent came out and "told us we couldn't unload"; that no trucks were unloaded and that "we left with Mr. Morton in his car"; that at the Schoen gates he saw two picket signs on each side of the entrance; that the Project Engineer at the by-pass on Route 20 "told us to take our trucks off the job after Larry Evans came out of the office."

[fol. 642] Witness Charles Robinson testified that he drove into the France plant where he was employed as a Plant Manager; and saw the men at the entrance with picket signs, and that a fellow then came in in a black Cadillac.

Howard Stultz testified that he worked for plaintiff in 1956, but that he is not now working for plaintiff; that his position was that of a mechanic, and that he drove a truck for plaintiff in August of 1956; that he worked as a mechanic in the garage until the third or fourth day of the strike when he hauled sand to Schoen Asphalt in Toledo from the Dolomite quarry; that he saw men standing around a car talking, but saw no signs; that a man came out of the office and "told us to leave the truck unloaded"; that when he left the men were still at the gate; that he drove ~~into~~ the France Stone Company during the strike and saw a sign there at least two days indicating "Morton Company on strike"; that he saw the two Combs' boys and Nye with the signs.

Elmer Luttrell testified that he was employed by Launder & Sons in 1956 as Field Office and Batch Plant Manager; that his employer was paving Route 20 by-pass; that they were using Morton's dump trucks and batch trucks, and that he was informed by Mr. Launder of the Morton strike; that after the strike three of Morton's trucks appeared for a short period of time; that Larry Evans "called me and asked if Morton's trucks were on the job".

Kenneth Lidster testified that he worked for the O'Connell Company in 1956, making ready-mix; that he drove a truck, and that the plaintiff "hauled our sand and I then belonged to Local 20"; that Irvin Mowery, one of defendant's Business Agents, called to see him, and that Mowery said they had a strike on Morton and he would just as

[fol. 643] leave "we didn't use his trucks"; that "I told our boss Howard Magers".

Howard Magers, Jr. testified that Kenneth Lidster "our Union Steward" informed me that Morton had been struck and he had been so informed by a teamster.

James Schoen testified that he was a paving contractor, Treasurer of Schoen Asphalt, and that Morton supplied sand in 1956; that, on August 20, he saw a sign at his entrance "Morton's strike", and that there were people around; that he talked to Ed Sullenger, Business Agent of defendant, and Sullenger "told us we could not and should not deal with Morton on strike; that the trucks should remain unloaded"; that he further had two conversations in his office with Sullenger, "when he tried to persuade us not to do business with Morton"; that he had other conversations over the telephone with Sullenger, all occurring within a week after the strike commenced, all "trying to persuade us not to use Morton's sand"; that a Mr. Evans also joined with Sullenger in the first conversation, but that he could not identify Evans.

Ransom Taulbee testified that he worked for plaintiff in 1956; that he did not work during the strike, the reason was he did not want trouble, and that some trucks left plaintiff's during the strike, and that the trucks that left were followed by Evans and others; that he did not want to take a truck out and get followed or get hurt. On cross-examination, he testified that he saw Evans follow trucks more than once.

We have reviewed here some, but not all, of the activities engaged in by the defendant, through its Business Agents, in contacting suppliers and others that were doing business with the plaintiff in an apparent effort to discourage further business with plaintiff, and to injure the plaintiff in the operation of his business. Some of these activities, unfortunately, were engaged in after and in the face of the restraining order issued by the Common Pleas Court of Seneca County on the 21st day of August, 1956. Some of the contacts made by defendant's agents were made with employees of plaintiff's suppliers and companies with which the plaintiff was doing business, and

some of the contacts were made with managers or superintendents or officers of these companies. All of them, apparently, had the same purpose in mind.

Looking at the picture as a whole, we conclude that the special damages suffered by plaintiff in connection with the Launder matter amounted to the sum of \$8,684.92, in connection with the O'Connel Company in the amount of \$1,644.79, and in connection with the Wilson Company in the amount of \$9,289.91, for a sum total of \$19,619.62. Compensatory damages, therefore, in the sum of \$19,619.62 are awarded.

Coming to the question of punitive damages, we believe that some punitive damages should be awarded. The conduct of defendant, through its agents, constituting secondary activity was in violation not only of the Federal statute but of the common law of Ohio relative to secondary boycotts and conspiracy. Some of this activity, in violation of the restraining order of the Common Pleas Court of Seneca County, is regrettable.

Although the punitive damages awarded in the Meadow Creek and the Osborne cases, *supra*, were predicated substantially upon the extreme violence that pervaded the strikes, we see no reason why the award of punitive damages should be limited to cases where violence is engaged in. Here the objective was to bring the plaintiff to his [fol. 645] knees, and the means employed were unlawful. An award of \$15,000.00 as and for punitive damages is assessed.

In the course of our consideration of this case, we have not only studied and considered the cases of the United Mine Workers and the Osborne Company, *supra*, but also, in particular, the following cases: Local Union No. 984, *etc. et al. v. Humko Company, Inc., etc. et al.*, 287 Fed. (2d) 231 (Cert. Den. 1961); Carpenters Union, Local 131 *et al. v. Cisco Construction Co., etc.*, 266 Fed. (2d) 365 (Cert. Den. 361 U. S. 828), and the case of United Brick & Clay Workers of America *et al. v. Deena Artware, Inc.* (6th Cir.), 198 Fed. (2d) 637, which is cited in the Cisco case, *supra*; also the case of William Gilchrist, Jr. *et al. v. United Mine Workers of America*, 290 Fed. (2d) 36 (Cert. Pending 12/14/61).

Plaintiff may, within fifteen (15) days, prepare and lodge with the Court Findings of Fact and Conclusions of Law drawn in accordance with this Opinion. Defendant may, within fifteen (15) days thereafter, note its exceptions or suggested additions thereto.

An order may be drawn accordingly.

Frank L. Kloebe, United States District Judge.

Toledo, Ohio.

[fol. 646] In conformity with Rule 77 (d), F. R. C. P., please take notice that the following order or judgment was entered in this Court on January 26, 1962. C. B. Watkins, Clerk.

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO,

WESTERN DIVISION.

No. 8222. Civil.

LESTER MORTON, d/b/a LESTER MORTON TRUCKING COMPANY,  
Route No. 2, Tiffin, Ohio, Plaintiff,

vs.

LOCAL 20, TEAMSTERS, CHAUFFEURS AND HELPERS UNION,  
an Affiliate of the International Brotherhood of Team-  
sters, Chauffeurs, Warehousemen and Helpers of Amer-  
ica, Toledo 6, Ohio, Defendant.

JUDGMENT—January 26, 1962

This cause came on regularly and was tried by the Court without the intervention of a jury between the dates of April 24, 1961, and May 9, 1961, Plaintiff appearing by M. J. Stauffer and John R. Py, his attorneys, and Defendant appearing by Hugh Hafer and Jack Gallon, its attorneys;

Whereupon the Court having heard the evidence adduced and considered the briefs filed herein, and having rendered its opinion and entered findings of fact and conclusions of law;

[fol. 647] Now, Therefore,

It is adjudged that the Plaintiff have and recover from the Defendant the sums of \$19,619.62 as compensatory damages and \$15,000.00 as punitive damages for a total of \$34,619.62, together with his costs of this suit in the amount of \$490.44.

Dated this 26th day of January, 1962.

Frank L. Klobb, United States District Judge.

[fol. 649] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 14984

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

LESTER MORTON, d/b/a Lester Morton Trucking Company,  
Plaintiff-Appellee,

v.

LOCAL 20, TEAMSTERS, CHAUFFEURS, AND HELPERS UNION,  
an Affiliate of the International Brotherhood of Team-  
sters, Chauffeurs, Warehousemen and Helpers of  
America, Defendant-Appellant.

OPINION—July 25, 1963.

Before: O'SULLIVAN, Circuit Judge, BOYD and THORNTON, District Judges.

THORNTON, District Judge. Plaintiff filed this action in the district court seeking damages on account of a secondary boycott against it. The primary strike commenced



August 17, 1956 and continued until October 5, 1956. Plaintiff claims that defendant's activities were unlawful within the purview of § 303 of the Labor Management Relations Act of 1947, 29 U. S. C. A. § 187, as well as being unlawful under the common law of the State of Ohio.

District Judge Kloeb, by his findings of fact and conclusions of law filed separately from his opinion, found that defendant had engaged in unlawful secondary activity that was violative of § 303 and also of the common law of Ohio. He awarded \$19,619.62 compensatory damages plus \$15,000.00 punitive damages.

[fol. 650] The questions raised by appellant-defendant on this appeal have been resolved on one or more prior occasions by the Supreme Court of the United States or by this court. Defendant seeks to distinguish this case from those that have preceded it in the various particulars upon which it bases its argument for reversal.

#### I. Jurisdiction Where Federal Claim Joined With Non-Federal Common Law Tort Action

Defendant contends that a federal court is without jurisdiction to entertain a suit for damages based on a secondary boycott unlawful under state law even though the suit also seeks damages under § 303 for an unlawful secondary boycott. This contention is directly contrary to the holding in the 1933 decision of *Hurn v. Oursler*, 289 U. S. 238, as well as that in a number of recent cases decided by this court. Included among these are *Flame Coal Company v. United Mine Workers of America*, 303 F.2 39 (6 Cir., 1962); *White Oak Coal Company v. United Mine Workers of America*, decided May 24, 1963, — F.2 — (6 Cir.); *United Mine Workers of America v. Meadow Creek Coal Company*, 263 F.2 52 (6 Cir., 1959), certiorari denied, 359 U. S. 1013; and *United Mine Workers of America v. Osborne Mining Co.*, 279 F.2 716 (6 Cir., 1960), certiorari denied, 364 U. S. 887. Defendant contends that since there was no violence in the instant case a different rule applies. We are not aware of such a distinction and in fact are unable to appreciate any legal or logical reason for such a jurisdictional distinction. No decided case has been called to our attention in support of this



contention by defendant. Another aspect of this argument advanced by defendant is that if the state court could not have entertained this suit for damages under state common law because of pre-emption by federal law there can be no recovery here. This contention is disposed of adversely to defendant by the holdings in the five cases above cited. The holdings in these cases permit joining federal and nonfederal grounds in support of a cause of action. A nonfederal cause of action is not extinguished because a state court is pre-empted by federal law from providing relief. We do not here decide that a state court is pre-empted from entertaining such a suit and awarding [fol. 651] damages. We make the observation that the Supreme Court on December 10, 1962 handed down a decision holding that a § 301 action was not subject to the pre-emption doctrine under *Garmon*.<sup>1</sup> *Smith v. Evening News*, 371 U. S. 195. It may be that the same considerations apply to a § 303 cause of action. See *Local 100 of the United Association of Journeymen and Apprentices v. Borden*, decided June 3, 1963, — U. S. —, footnote 3 of which reads as follows:

"49 Stat. 452, as amended, 28 U. S. C. §§ 157, 158. We do not deal here with suits brought in state courts under §§ 301 or 303 of the Labor Management Relations Act, 61 Stat. 156, 158, 29 U. S. C. §§ 185, 187, which are governed by federal law and to which different principles are applicable. See, e.g., *Smith v. Evening News Assn.*, 371 U. S. 195."

Is it not implicit in the above that state courts are not subject to the pre-emption doctrine insofar as both § 301 and § 303 are concerned?

## II. Denial of Motion to Amend Answer

Prior to the trial date in the district court defendant asked for leave to file a motion to dismiss the amended complaint. Such leave was granted. The basis for the mo-

<sup>1</sup> *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (1959).

tion was set forth in defendant's memorandum in support thereof, namely, that a state court order dismissing plaintiff's action for the common law secondary boycott damages was res judicata and that such subject matter therefore could not be included in the instant suit in federal district court. The order of the state court reads as follows:

"It is Ordered that this matter be, and the same hereby is, dismissed otherwise than upon the merits, without the consent of the plaintiff, *without prejudice to a new action based upon the same subject matter*,\* and for the reason that the Court does not have jurisdiction of the subject matter under the decision of the United States Supreme Court in *San Diego Building Trades Council v. Garmon*, 49 ALC 485. Exceptions saved to the plaintiff and defendant's costs taxed to the plaintiff."

[fol. 652] It is clear that the reason for its issuance was the doctrine of pre-emption. The state court's citation of *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (1959) was obviously for the purpose of indicating the authority upon which it relied in holding that state court jurisdiction was absent, not for the purpose of determining that jurisdiction was present in some other forum, a determination that may be made initially only by each forum for itself. It happens that the court in *San Diego* was concerned with the primary jurisdiction of the National Labor Relations Board to adjudicate the status of a disputed activity. The court there said that "(W)hen an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted. It also said: "Nor is it significant that California asserted its power to give damages rather than to enjoin what the Board may restrain though it could not compensate." *San Diego v. Garmon*, supra, 245-246. The Board has no power therefore to award compensation. Neither has the state court such power in an area of federal pre-emption. How-

\* Italics supplied.

ever, Congress has provided a forum by virtue of 29 U. S. C. A. § 187 and this is completely independent of any National Labor Relations Board proceeding.<sup>2</sup> *International Longshoremen's & Warehousemen's Union v. Juneau Spruce Corp.*, 342 U. S. 237 (1952). The trial court denied this motion to dismiss. When the trial of this case began defendant again sought to present its res judicata contention by moving to amend its answer to add res judicata as an affirmative defense. This motion was denied by the trial court and such denial is here raised by defendant as constituting prejudicial error. We cannot agree. The granting or refusal of leave to amend is within the trial court's sound discretion. *Chesapeake & Ohio Railway Company v. Newman*, 243 F.2 804, 813 (6 Cir., 1957). We do not here find an abuse of such discretion. In view of the nature of this amendment and in the light of what we have said above in regard to the law applicable to the res judicata contention of defendant, such defense is without merit. Its exclusion did not constitute prejudicial error.

### [fol. 653] III. Proof of Secondary Boycott

The findings of fact of the district judge as to secondary boycott activities violative of § 303 and of the state common law are amply supported by the evidence and are not clearly erroneous. *Commissioner of Internal Revenue v. Duberstein*, 363 U. S. 278, 291. It would serve no useful purpose to here review the particular activities.

### IV. Damages

That compensatory and punitive damages are recoverable for unlawful secondary boycott activities cannot be disputed. *Gilchrist v. United Mine Workers of America*, 290 F.2 36 (6 Cir., 1961), certiorari denied, 368 U. S. 75; *Flame Coal Company v. United Mine Workers of America*, 303 F.2 39 (6 Cir., 1962). That such damages are not capable of precise ascertainment does not preclude their

<sup>2</sup> One of the contentions advanced by appellant here is that the Board had exclusive jurisdiction of the subject matter of this controversy.

allowance. *United Mine Workers of America v. Osborne Mining Co.*, 279 F.2 716 (6 Cir., 1960), certiorari denied, 364 U. S. 887; *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U. S. 555 (1931). The basis upon which the lower court awarded compensatory damages in the amount of \$19,619.62 was a reasonable and justifiable one. There was evidence to support the award and the trial court's findings are not clearly erroneous. *Commissioner v. Duberstein*, supra. As to the punitive damage award of \$15,000.00, we cannot say that there was an abuse of discretion. The fact that the activities here engaged in did not involve violence does not entitle defendants to absolution from punitive damages. Had there been violence it may well be that punitive damages in a much greater amount would be justifiable.

For the foregoing reasons the judgment below is affirmed.

[fol. 654]

JUDGMENT—Filed July 25, 1963

Appeal from the United States District Court for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Approved for entry:

Thomas P. Thornton, United States District Judge  
(Sitting by Designation)

[fol. 655] Clerk's Certificate (omitted in printing).

[fol. 656]

## SUPREME COURT OF THE UNITED STATES

No. 485—October Term, 1963

LOCAL 20, TEAMSTERS; CHAUFFEURS AND HELPERS UNION, etc.,  
Petitioner,

vs.

LESTER MORTON, etc.

## ORDER ALLOWING CERTIORARI—December 9, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.